

# SENATE BILL REPORT

## SB 5803

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As of February 5, 2022

**Title:** An act relating to establishing a presumption of liability for wildfires caused by an electric utility's equipment.

**Brief Description:** Establishing a presumption of liability for wildfires caused by an electric utility's equipment. [**Revised for 1st Substitute:** Mitigating the risk of wildfires caused by an electric utility's equipment.]

**Sponsors:** Senators Rolfes, Dhingra, Frockt and Nobles.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/27/22, 2/02/22 [DPS-WM].  
**Ways & Means:** 2/05/22.

**Brief Summary of Proposed Second Substitute Bill**

- Directs the Department of Natural Resources to contract with a consultant to recommend a format and list of elements to be included in an Electric Utility Wildfire Mitigation Plan (plan), to be made public by April 1, 2023.
- Requires each utility to review and revise its plan by December 31, 2023, and every two years thereafter.
- Requires the Utilities and Transportation Commission, for electrical companies, and the governing boards, for consumer-owned utilities, to review plans to confirm whether the plan contains recommended elements.
- Directs the advisory committee to submit to the Legislature a compilation of the existing utility fire risk mitigation plans; an analysis of the costs and benefits for a comprehensive statewide wildfire risk map; and recommendations for strengthening state agency coordination of wildfire risk reduction, prevention, and suppression.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** That Substitute Senate Bill No. 5803 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Fortunato, Lias, Lovick, Nguyen, Sheldon, Stanford and Wellman.

**Staff:** Kimberly Cushing (786-7421)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Jed Herman (786-7346)

**Background:** Wildland Fire Advisory Committee. The Wildland Fire Advisory Committee (WFA Committee) was created in 2015. The WFA Committee advises the Commissioner of Public Lands (commissioner) on all matters related to wildland firefighting in the state. This includes developing strategies to enhance the safe and effective use of private and public wildland firefighting resources.

Utility Wildland Fire Prevention Advisory Committee. In 2019, the Legislature directed the commissioner to establish an Electric Utility Wildland Fire Prevention Task Force (task force). The task force was comprised of people with expertise in wildland fire risk reduction and prevention, a representative of both small and industrial forest landowners, and entities providing retail electric service.

In 2021, the Legislature, directed the commissioner to convene a Utility Wildland Fire Prevention Advisory Committee (advisory committee) by August 1, 2021. The duties of the advisory committee are to advise the Department of Natural Resources (DNR) on issues including:

- matters related to the implementation of recommendations of the task force;
- providing a forum for electric utilities, DNR, and other fire suppression organizations of the state to identify and develop solutions to issues of wildfire prevention and risk;
- mitigation specifically related to electric utilities' transmission and distribution networks, identification of best management practices, electric utility infrastructure protection, and wildland fire suppression and response; and
- establishing joint public communications protocols among members of the advisory committee, and other entities, to inform residents of potential critical fire weather events and the potential for power outages or disruptions.

Utilities and Transportation Commission. In May 2021, the Utilities and Transportation Commission (UTC) held a workshop on utility wildfire preparedness. The three investor-owned electric utilities (IOUs) presented their plans for the upcoming wildfire season, including plans for fire mitigation strategies and communications plans with state, federal, and local emergency response agencies, and customers.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Second Substitute):** Electric Utility Wildfire Mitigation Plans. DNR must contract with an independent consultant to recommend a format and list of elements to be included in Electric Utility Wildfire Mitigation Plans (plans), including best practices for each element.

DNR must seek input from the Energy Emergency Management Office (EMMO) of the Department of Commerce, UTC, the advisory committee, electric utilities, the state fire marshal, the Governor's Office of Indian Affairs, and the public. By April 1, 2023, DNR must make public a recommended format and a list of elements for plans.

The recommended elements must acknowledge that utilities serve areas that vary in topography, vegetation, population, and other characteristics, and that the best practice guidelines within each element must recognize that a utility's plan will be designed to fit site-specific circumstances. The recommended elements must include, but are not limited to:

- vegetation management along transmission and distribution lines and near associated equipment;
- inspection and maintenance repair activities and schedules;
- modification or upgrades to facilities and construction of new facilities to incorporate measures to minimize fire risk; and
- prevention programs, including adoption of new technologies to harden infrastructure.

The recommended format and list of elements must be forwarded to the UTC, DNR, EMMO, and all electric utilities for a review period of three months prior to finalizing the format and list of elements that the utilities will use to adopt or update their plan.

Each electric utility must review and revise, if appropriate, its plan by December 31, 2023, and every two years thereafter. The plan should include a review of specific circumstances of that utility and incorporate as appropriate the recommendations developed by DNR.

Electrical companies must submit their plans to the UTC, which must review within six months and confirm whether the plan contains the recommended elements.

The governing board of each consumer-owned utility (COU) must review the plan and confirm whether the plan contains the recommended elements. Local fire districts must be given the opportunity to review and provide feedback during this period. Each COU must also submit their plan to EEMO for review, and EEMO must provide feedback within six months for consideration for inclusion in the next plan revision. By December 31, 2023, EEMO must be available to provide technical assistance to the COUs to include the best practices guidelines in their plans.

After the reviews, each utility must provide a copy of their plan and list of wildfires within its customer service area to DNR to be posted. The COUs must provide their plans by December 31, 2022. DNR must create a public web site to host the plans.

Utility Wildland Fire Prevention Advisory Committee. By December 31, 2022, and at the beginning of each subsequent biennium, the advisory committee must submit to the Legislature:

- a compilation and summary of existing fire risk mitigation plans maintained by electric utilities;
- an analysis of the costs and benefits of preparing and maintaining a comprehensive statewide wildfire risk map that identifies relative risk classes, with detail to assist property owners, local governments, wildland management agencies, and fire response agencies in taking actions to minimize wildland fire starts and resulting damage, and address incorporating the boundaries of the wildland urban interface; and
- recommendations for strengthening state agency coordination of wildfire risk reduction, prevention, and suppression, which include the views of the WFA, Department of Commerce Energy Policy Division, and the Emergency Management Division of the Military Department.

The advisory committee chair must schedule and hold meetings on a regular basis to expeditiously accomplish these duties and make recommendations.

A representative of EEMO and the UTC is added to the advisory committee.

#### **EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):**

Directs the Energy Emergency Management Office (EEMO), within the department of Commerce (Commerce), to recommend a format and list of elements to be included in an Electric Utility Wildfire Mitigation Plan (plan), to be made public by April 1, 2023. Requires EEMO to seek input from specified entities.

Requires the recommended elements to acknowledge that utilities serve areas that vary in topography, vegetation, population, and other characteristics, and that the best practice guidelines within each element must recognize that a utility's adoption will fit site-specific circumstances. Requires the recommended format and elements to be forwarded to the UTC, DNR, and all electric utilities for a review period of three months.

Requires each utility to review and revise its plan by Dec. 31, 2023, and every two years thereafter. Electrical companies must submit their plans to the UTC, which must review within 6 months and confirm whether the plan contains the recommended elements. Consumer-owned utilities (COUs) must submit their plans to the EEMO for review, and EEMO must provide feedback within six months.

Provides that EEMO must be available to provide technical assistance to the COUs to include the best practices guidelines in their plans. Authorizes Commerce to assess a fee on each utility required to submit a plan to cover the costs of reviewing and providing feedback on the plan.

Directs that after the reviews, each utility must provide a copy of their plan and list of wildfires within its customer service area to EEMO to be posted. Requires EEMO to create a public web site to host the electric utility wildfire mitigation plans.

Adds intent language to clarify that electric utilities partners with relevant state agencies, emergency responders and others in identifying best practices to reduce the risk of and prevent wildland fires, and that they should adopt and implement wildfire mitigation plans informed by recognized best practices as applicable to their geography, terrain, vegetation, and other characteristics specific in their service area.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: Over the last two years, over 3 million acres of state land has burned. Wildfires are of statewide importance and we want to make sure utilities have plans that are transparent and consistent across the state. A wildfire map will be helpful. Wildfire mitigation plans should be approved to bring oversight for a consistent review to utilities. A plan should include foundational elements, such as risk modeling, situational awareness, system hardening, operation practices, and community engagement. There were concerns with the original bill and we appreciated the new draft. Utilities are having problems accessing adequate insurance, thus changes to insurance law could help. We must work together to create more resilient grid. The first line of defense is to prevent wildfires from happening in the first place.

OTHER: Utilities have learned from previous fires that we need better agency coordination and communication. Developing plans is the next logical step in reducing wildfires. Guidance on the appropriate elements to incorporate is important. The advisory committee could review plans for COUs. DNR would be the best place to review plans. To develop plans, utilities will be looking at the design of the electric system throughout the state and will need the appropriate expertise. A utility must use best practices based on their knowledge of their own system. Each utility is geographically, demographically, and

operationally unique. Best practices will vary depending on utility's vegetation, topography, and weather. DNR has firefighting knowledge and utilities have equipment and system knowledge and can learn from each other. We share the end goal to make sure communities are well prepared to mitigate against wildfires.

**Persons Testifying (Environment, Energy & Technology):** PRO: Senator Christine Rolfes, Prime Sponsor; Matt Miller, Puget Sound Energy; Allen Berreth, PacifiCorp; John Rothlin, Avista; Loren Torgerson, 1111 Washington St. SE.

OTHER: David Bayard, Seattle City Light; Jim Smith, Klickitat Public Utility District; Peter Godlewski, Association of Washington Business; Kent Lopez, Washington Rural Electric Cooperative Association; Nicolas Garcia, WPUDA; Dave Arbaugh, Chelan PUD; Dave Warren, Douglas County PUD; Clark McIsaac, Snohomish County PUD; Steve Taylor, Cowlitz PUD; Jason Lewis, Utilities and Transportation Commission.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):** No one.

**Staff Summary of Public Testimony On Proposed Second Substitute (Ways & Means):** PRO: We support the proposed substitute bill, it is the result of a collaborative process. The current version of the bill ensures communities will be protected. Please advance this bill. Thank you for the partnership.

**Persons Testifying (Ways & Means):** PRO: Nicolas Garcia, WPUDA; Clark McIsaac, Snohomish PUD; Dave Arbaugh, Chelan PUD; Dave Warren, Klickitat PUD.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.