

# SENATE BILL REPORT

## SB 5305

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As of February 1, 2019

**Title:** An act relating to electric utility wildland fire prevention.

**Brief Description:** Concerning electric utility wildland fire prevention.

**Sponsors:** Senators Van De Wege, Warnick, McCoy, Takko, Short, Sheldon and Nguyen.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 1/31/19.

**Brief Summary of Bill**

- Requires the Commissioner of Public Lands (commissioner) to establish a utility wildland fire prevention task force (task force) comprised of representatives from utilities and people with expertise in wildland fire risk reduction.
- Requires the task force to advise the commissioner on certain protocols, including a roster of third-party certified wildland fire investigators.
- Provides, in an action against an electric utility for wildland fire damage, a plaintiff in order to prevail must prove the utility failed to exercise ordinary care consistent with the practical operation of the utility and as a proximate result of the failure the plaintiff suffered damages.

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**SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS**

**Staff:** Karen Epps (786-7424)

**Background:** Department of Natural Resources Fire and Forest Health Programs. In 2007 the Legislature designated the Department of Natural Resources (DNR) as the state lead in developing a comprehensive forest health program for the state and created a tiered advisory and regulatory system to address forest health issues. DNR has direct charge of and supervision over all matters pertaining to the forest fire service of the state. The forest fire-related duties of DNR include enforcing all forest fire-related laws, investigating the cause of forest fires, and directing fire suppression efforts as necessary.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

Investor-Owned Utilities. An investor-owned utility is a corporation owned by investors that is engaged in distributing electricity to retail electric customers in the state. Currently, three electric investor-owned utilities serve Washington customers: Avista, Puget Sound Energy (PSE), and PacificCorp. Of the three, only PSE has customers limited to Washington.

Municipal Utilities. Municipal utilities in Washington are authorized to provide residents with gas, electricity, water, and other services that are charged by rates or fixed prices. A municipality that intends to acquire or construct a public utility must generally submit the matter for a public vote.

Public Utility Districts. Formed in 1931 by Initiative 1, public utility districts (PUDs) are municipal corporations authorized to provide electricity, water and sewer services, and wholesale telecommunications. The voters in an area of the state may vote to create a PUD to provide utility services. PUDs are governed by a board of either three or five nonpartisan commissioners who are elected to six-year terms. There are 28 operating PUDs in Washington.

Rural Electric Cooperatives. A rural electric cooperative provides utility services to rural areas of Washington. Cooperatives serve over 280,000 customers and offer electric service on a non-profit basis. The rates and policies are set by locally elected boards of directors.

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

**Summary of Bill (Proposed Substitute):** The commissioner must establish a utility wildland fire prevention task force (task force). The commissioner must appoint task force members and convene the first meeting. The task force is comprised of people with expertise in wildland fire risk reduction and prevention, and entities providing retail electric service, including:

- one person representing each investor-owned utility;
- two people representing municipal utilities;
- two people representing public utility districts; and
- two people representing rural electric cooperatives.

The task force must advise DNR on the development of:

- a model agreement for managing danger trees and other vegetation that pose a risk of wildland fire and associated utility liability due to the proximity to electrical transmission wires and other utility equipment;
- communication protocols and educational exchanges between DNR and electric utilities for identifying and addressing issues relating to utility infrastructure to reduce the risks of wildland fires;
- protocols and thresholds when DNR's investigation involves electric utility infrastructure or potential electric utility liability; and
- rosters of certified wildland fire investigation firms or persons and third-party qualified utility operators.

In consultation with the task force, DNR must make the communication protocols and educational exchanges available, publish the protocols and thresholds, and issue a roster of

third-party certified wildland fire investigators and qualified utility personnel. DNR must update the roster of third-party certified wildland fire investigators and qualified utility personnel no less than every four years. With the assistance of the task force, DNR must distribute a voluntary model danger tree management agreement to utilities. Additionally, DNR must submit a preliminary report to the Legislature in December 2019, and a final report in December 2020.

**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:** PRO: Fires can cause massive disruption in utility service, destroy costly infrastructure, and may create untenable liability exposure. Some PUDs in the state are challenged with providing power with power lines in a very dry environment which means there are risks of fires. PUDs are particularly vulnerable because they operate approximately 35,000 miles of transmission distribution wire in rural areas. This bill will facilitate discussions between DNR and utilities about fire risk and how to mitigate those risks. It is extremely important to maintain power even in times of fire because most of these areas rely on pumps and wells in order to be able to obtain water to fight the fire. This bill fosters coordination, interaction and discussion between public agencies and public and private utilities to try to avoid the risk of fires and reduce the impacts of fires when they occur. The task force will specifically discuss how best to deal with danger trees, investigations, how to encourage fire safe behavior amongst the public, and how to improve the communication avenues between DNR and utilities. Collaboration is key to ensuring a unified approach to wildfire prevention and this bill provides an opportunity to make progress on some of the goals of DNR's wildfires strategic plan.

OTHER: Private forestland has utility easements across these private lands and private forestland owners would appreciate the opportunity to participate in this conversation.

**Persons Testifying:** PRO: Senator Kevin Van De Wege, Prime Sponsor; Joanna Eide, DNR; Loren Torgerson, Strategic Advisor, DNR; Dave Warren, Klickitat PUD; Jim Smith, Klickitat PUD; Nicolas Garcia, Washington PUD Association.

OTHER: Jason Callahan, Washington Forest Protection Association.

**Persons Signed In To Testify But Not Testifying:** No one.