
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5803

State of Washington

67th Legislature

2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Rolfes, Dhingra, Frockt, and Nobles)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to mitigating the risk of wildfires caused by an
2 electric utility's equipment; amending RCW 76.04.780; adding new
3 sections to chapter 76.04 RCW; adding a new section to chapter 80.28
4 RCW; adding a new section to chapter 19.29A RCW; and creating a new
5 section.

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

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

13 (2) The legislature finds that electric utilities are partners
14 with relevant state agencies, emergency responders, and public and
15 private entities in identifying best practices to reduce the risk of
16 and prevent wildland fires. Many electric utilities have developed
17 and are implementing wildfire mitigation plans. The legislature
18 further finds that electric utilities should adopt and implement
19 wildfire mitigation plans, and that electric utilities should be
20 informed by recognized best practices, as applicable to their
21 geography, terrain, vegetation, and other characteristics specific in

1 their service area, for reducing wildland fire risk and reducing
2 damage from wildland fires as may be ignited by electric utility
3 equipment.

4 (3) Therefore, the legislature intends to authorize the
5 development of best practices guidelines and to require that electric
6 utilities provide their wildfire mitigation plans to the state in
7 order to promote public transparency and to obtain review of the
8 plans for inclusion of applicable best practices guidelines.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 76.04
10 RCW to read as follows:

11 (1) The department shall contract with an independent consultant
12 with experience in developing utility wildfire mitigation plans to
13 recommend a format and a list of elements to be included in electric
14 utility wildfire mitigation plans, including best practices guidance
15 that may apply to each element as appropriate. In developing the
16 format and list of elements, the department shall seek input from the
17 utilities and transportation commission, the energy emergency
18 management office of the department of commerce, the utility wildland
19 fire prevention advisory committee, electric utilities, the state
20 fire marshal, the governor's office of Indian affairs, and the
21 public. By April 1, 2023, the department shall make public a
22 recommended format and list of elements for electric utility wildfire
23 mitigation plans.

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

30 (a) Vegetation management along transmission and distribution
31 lines and near associated equipment;

32 (b) Infrastructure inspection and maintenance repair activities,
33 schedules, and recordkeeping;

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

37 (d) Preventative programs, including adoption of new technologies
38 to harden utility infrastructure; and

39 (e) Operational procedures.

1 (3) The recommended format and list of elements developed by the
2 department must be forwarded to the utilities and transportation
3 commission, the energy emergency management office of the department
4 of commerce, and all electric utilities in Washington state for a
5 review period of three months prior to finalizing the format and list
6 of elements that utilities will use to adopt or update their electric
7 utility wildfire mitigation plan.

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

10 (a) "Consumer-owned utility" means a municipal electric utility,
11 public utility district, irrigation district, cooperative, or mutual
12 corporation association.

13 (b) "Electric utility" means: (i) An electrical company as
14 defined in RCW 80.04.010 that is engaged in the business of
15 distributing electricity to one or more electric customers in the
16 state; or (ii) a consumer-owned utility that is engaged in the
17 business of distributing electricity to one or more electric
18 customers in the state.

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

21 By December 31, 2023, and every two years thereafter, each
22 electrical company must review and revise, if appropriate, its
23 wildfire mitigation plan. The plan should include a review of
24 specific circumstances of that electrical company and incorporate as
25 appropriate the recommendations developed pursuant to section 2 of
26 this act. The electrical company must submit its plan to the
27 commission and make the plan publicly available. Within six months of
28 submission by the electrical company, the commission shall review the
29 plan and confirm whether or not the plan contains the recommended
30 elements. In reviewing the plan, the commission must consult with the
31 department of natural resources and the energy emergency management
32 office of the department of commerce. The commission's review of an
33 electrical company's wildfire mitigation plan does not relieve an
34 electrical company from proactively managing wildfire risk, including
35 by monitoring emerging practices and technologies, and mitigating and
36 responding to wildfires. The commission is not liable for an
37 electrical company's performance implementing its wildfire mitigation
38 plan. An electrical company may pursue recovery of costs and
39 investments associated with a wildfire mitigation plan through a

1 proceeding to set rates at the commission. Nothing in this section or
2 sections 2, 4, and 6 of this act may be construed to preclude
3 electrical companies from continuing to develop and implement
4 wildfire mitigation measures. After the commission's review, the
5 electrical company must provide a copy of the plan to the department
6 of natural resources along with a list and description of wildland
7 fires within its customer service area over the previous two years as
8 reported by the department of natural resources. The plan must be
9 posted as specified in section 6 of this act.

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

12 (1) By December 31, 2023, and every two years thereafter, each
13 consumer-owned utility must review and revise, if appropriate, its
14 wildfire mitigation plan. The plan should include a review of
15 specific circumstances of that utility and incorporate as appropriate
16 the recommendations developed pursuant to section 2 of this act.

17 (a) The governing board of each consumer-owned utility shall
18 review the plan and confirm whether the plan contains the recommended
19 elements. Local fire districts must be provided the opportunity to
20 review and provide feedback during this period. After the governing
21 board's review, the utility must provide a copy to the department of
22 natural resources, along with a list and description of wildland
23 fires within its customer service area over the previous two years as
24 reported by the department of natural resources. The plan must be
25 posted as specified in section 6 of this act.

26 (b) Each consumer-owned utility must also provide its plan to the
27 energy emergency management office of the department of commerce for
28 review, which must review the plans and provide feedback within six
29 months for consideration for inclusion in the next plan revision.

30 (c) By December 31, 2022, each utility must provide a copy of
31 their most recent plan to the department of natural resources and it
32 must be posted on a website.

33 (d) By December 31, 2023, the energy emergency management office
34 will be available to provide technical assistance to consumer-owned
35 utilities to include the best practices guidelines in their revision
36 of plans.

37 (2) Two or more abutting utilities may codevelop a wildfire
38 mitigation plan. Wildfire mitigation plans that are codeveloped by
39 more than one utility may identify areas of common implementation,

1 including communication protocols, that will assist in implementing
2 the recommended elements pursuant to section 2 of this act.

3 (3) Nothing in this section prohibits a utility from reviewing or
4 updating its wildfire mitigation plan more often than every two years
5 or requires that the utility submit their plan beyond the
6 requirements of subsection (1) of this section.

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

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

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

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

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

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

25 (iv) Implementing recommendations of the task force related to
26 creating rosters of certified wildland fire investigator firms or
27 persons and qualified utility operations personnel who may be called
28 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 joint public communications protocols among
37 members of the advisory committee, and other entities, to inform
38 residents of the state of potential critical fire weather events and
39 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. In addition, by December 31, 2022, the
26 department must submit to the appropriate committees of the senate
27 and house of representatives:

28 (a) A compilation and summary of existing wildfire mitigation
29 plans maintained by electric utilities;

30 (b) An analysis of the costs and benefits of preparing and
31 maintaining a comprehensive statewide wildland fire risk map that
32 identifies relative risk classes, with detail at a level to assist
33 property owners, local governments, utilities, wildland management
34 agencies, and fire response agencies in taking actions to minimize
35 wildland fire starts and resulting damage. The analysis must also
36 address incorporating the boundaries of the wildland urban interface
37 as mapped pursuant to RCW 19.27.031; and

38 (c) Recommendations for strengthening state agency coordination
39 of wildland fire risk reduction, prevention, and suppression. In this
40 work the utility wildland fire prevention advisory committee shall

1 seek the views of the wildland fire advisory committee created under
2 RCW 76.04.179, as well as the views of the department of commerce
3 energy policy division and the emergency management division of the
4 military department.

5 (4) The commissioner or the commissioner's designee must chair
6 the advisory committee created in subsection (1) of this section and
7 must appoint advisory committee members. The advisory committee must
8 include a representative of the energy emergency management office of
9 the department of commerce and a representative of the utilities and
10 transportation commission. Advisory committee membership should also
11 include:

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

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

14 (ii) Two persons representing municipal utilities;

15 (iii) Two persons representing public utility districts;

16 (iv) Two persons representing rural electric cooperatives;

17 (v) One person representing small forestland owners;

18 (vi) One person representing industrial forestland owners;

19 (b) Other persons with expertise in wildland fire risk reduction
20 and prevention; and

21 (c) No more than two other persons designated by the
22 commissioner.

23 (5) In addition to the advisory committee membership established
24 in subsection (4) of this section, the commissioner shall designate
25 two additional advisory committee members representing historically
26 marginalized or underrepresented communities.

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

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

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

38 (9) Any requirements in this section are subject to the
39 availability of amounts appropriated for the specific purposes
40 described.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 76.04
2 RCW to read as follows:

3 (1) The department must create a public website to host electric
4 utility wildfire mitigation plans developed under sections 3 and 4 of
5 this act.

6 (2) Nothing in this act may be construed to preclude electric
7 utilities from continuing to develop and implement their wildfire
8 mitigation plans. Electric utilities are encouraged to submit their
9 2022 plans to the department's energy emergency management office for
10 inclusion on the website under subsection (1) of this section.

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

13 (a) "Consumer-owned utility" means a municipal electric utility,
14 public utility district, irrigation district, cooperative, or mutual
15 corporation association.

16 (b) "Electric utility" means: (i) An electrical company as
17 defined in RCW 80.04.010 that is engaged in the business of
18 distributing electricity to one or more electric customers in the
19 state; or (ii) a consumer-owned utility that is engaged in the
20 business of distributing electricity to one or more electric
21 customers in the state.

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