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**SUBSTITUTE SENATE BILL 5039**

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**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)

AN ACT Relating to mitigating the risk of wildfires through electric utility planning and identification of best management practices appropriate to each electric utility's circumstances; amending RCW 76.04.780; adding a new section to chapter 76.04 RCW; adding a new section to chapter 80.28 RCW; adding a new section to chapter 19.29A RCW; and creating a new section.

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

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

(2) The legislature finds that electric utilities are partners with relevant state agencies, emergency responders, and public and private entities in identifying best practices to reduce the risk of and prevent wildland fires. Many electric utilities have developed and are implementing wildfire mitigation plans. The legislature further finds that electric utilities should adopt and implement wildfire mitigation plans, and that electric utilities should be informed by recognized best practices, as applicable to their geography, terrain, vegetation, and other characteristics specific in their service area, for reducing wildland fire risk and reducing damage from wildland fires as may be ignited by electric utility equipment.

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

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

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

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

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

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

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

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

(e) Operational procedures;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Providing a forum for electric utilities, the department, and other fire suppression organizations of the state to identify and develop solutions to issues of ((~~wildfire~~)) wildland fire 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;

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

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

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

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

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

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

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

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

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

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

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

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

(a) Entities providing retail electric service, including:

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

(ii) Two persons representing municipal utilities;

(iii) Two persons representing public utility districts;

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

(v) One person representing small forestland owners;

(vi) One person representing industrial forestland owners;

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

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

~~(5) In addition to the advisory committee membership established in subsection (4) of this section, the commissioner shall designate two additional advisory committee members~~)) deems appropriate to carry out the functions of the advisory committee; and

(d) Two persons representing historically marginalized or underrepresented communities.

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

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

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

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

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