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**SENATE BILL 5039**

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**State of Washington 68th Legislature 2023 Regular Session**

**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 43.21F 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 43.21F RCW to read as follows:

(1) The office shall contract with an independent consultant with experience in developing electric utility wildfire mitigation plans to recommend a plan format and identify and recommend a list of actions to be included in electric utility wildfire mitigation plans, including best practices guidance that may apply to each action as appropriate. In identifying the plan format and list of actions, the office shall seek input from the utilities and transportation commission, the department of natural resources, 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 office shall make public a recommended format and list of actions for electric utility wildfire mitigation plans. The office may update these guidelines annually if needed, but not more than once in each year.

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

(g) Protocols for disabling reclosers and deenergizing portions of the electric system along with associated communication plans for impacted parties and the public, including highly impacted communities as defined in RCW 19.405.020, vulnerable populations as defined in RCW 19.405.020, and persons reliant on electricity to maintain necessary life functions;

(i) Each electric utility's protocols must include a description of how the utility will mitigate the public safety impacts of disabling reclosers and deenergizing portions of the electric system that consider the impacts on all of the following: Critical first responders, local and tribal governments, health and communication infrastructure, highly impacted communities as defined in RCW 19.405.020, vulnerable populations as defined in RCW 19.405.020, and persons reliant on electricity to maintain necessary life functions;

(ii) Decisions about whether or not to disable reclosers and deenergize electric lines are reserved to the electric utility; and

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

(3) The recommended format and list of actions identified by the office must be forwarded to the utilities and transportation commission, the department of natural resources, 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 actions that utilities will use to adopt or update their electric utility wildfire mitigation plan.

(4) The office will provide technical assistance to consumer-owned utilities and investor-owned utilities to support inclusion of these guidelines in the revision of their plans.

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

(6) By December 31, 2024, the office 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.

(7) 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" or "electrical company" 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.

(d) "Office" means the energy resilience and emergency management office of the department.

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 electrical company must review and revise, if appropriate, its wildfire mitigation plan. The plan should include a review of specific circumstances of that electrical company and incorporate as appropriate the identified actions pursuant to section 2 of this act. The electrical company must submit its plan to the commission and make the plan publicly available.

(a) Within six months of submission by the electrical company, the commission shall review the plan and confirm whether or not the plan contains the recommended actions. In reviewing the plan, the commission must consult with the energy resilience and emergency management office of the department of commerce. The commission's review of an electrical company's wildfire mitigation plan does not relieve an electrical company from proactively managing wildfire risk, including by monitoring emerging practices and technologies, and mitigating and responding to wildfires. The commission is not liable for an electrical company's performance implementing its wildfire mitigation plan. The commission's review of an electrical company'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.

(b) After the commission's review, the electrical company must provide a copy of the plan to the energy resilience and emergency management office of the department of commerce along with a list and description of wildland fires within its customer service area over the previous two years as reported by the department of natural resources. The plan must be posted as specified in section 2 of this act. Electrical companies are encouraged to submit any 2023 wildfire mitigation plans to the office prior to the revision date required in this subsection.

(2) Nothing in this act may be construed to relieve an electrical company from proactively managing wildfire risk, including by monitoring emergency practices and technologies, or mitigating and responding to wildland fires.

(3) For the purposes of this section, "electrical company" means a company owned by investors that meets the definition of "corporation" 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 and revise, if appropriate, its wildfire mitigation plan. The plan should include a review of specific circumstances of that utility and incorporate as appropriate the identified actions pursuant to section 2 of this act.

(a) The governing board of each consumer-owned utility shall review the plan and confirm whether the plan contains the recommended actions. Local fire districts must be provided the opportunity to review and provide feedback during this period. After the governing board's review, the utility must provide a copy to the energy resilience and emergency management office of the department of commerce, along with a list and description of wildland fires within its customer service area over the previous two years as reported by the department of natural resources. The energy resilience and emergency management office of the department of commerce must review the plans and provide feedback within six months for consideration for inclusion in the next plan revision. The plan must be posted as specified in section 2 of this act.

(b) The energy resilience and emergency management office of the department of commerce must review the submitted plans and provide feedback within six months for consideration for inclusion in the plan revision. The energy resilience and emergency management office of the department of commerce is not liable for a consumer-owned utility's implementation of its wildfire mitigation plan. The energy resilience and emergency management office of the department of commerce's review of the consumer-owned utility's 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 energy resilience and emergency management office of the department of commerce prior to the revision date required in this subsection.

(2) Two or more abutting electric 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 actions pursuant to section 2 of this act.

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

(4) Nothing in this act may be construed to relieve an electric utility from proactively managing wildfire risk, including by monitoring emerging practices and technologies, and mitigating and responding to wildfires.

**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:

(i) Finalizing 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 recommendations of the task force related to communications and information exchanges between the department and utilities;

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

(iv) Implementing 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 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. In addition, by December 31, 2023, the department must submit to the appropriate committees of the senate and house of representatives:

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

(b) 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.

(4) 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 advisory committee must include 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;

(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 persons designated by 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 representing historically marginalized or underrepresented communities.

(6) 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 in order to expeditiously accomplish the duties and make recommendations regarding the elements described in subsection (3) of this section.

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

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

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