

Representative Carl R. Albrecht proposes the following substitute bill:

WILDLAND FIRE PLANNING AND COST RECOVERY

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill enacts and modifies provisions relating to wildland fire planning and cost recovery.

Highlighted Provisions:

This bill:

- ▶ grants the Public Service Commission rulemaking authority to enact rules establishing procedures for the review and approval of a wildland fire protection plan;
- ▶ requires a qualified utility and an electric cooperative to prepare and submit for approval a wildland fire protection plan;
- ▶ specifies the information that is required to be included in a wildland fire protection plan;
- ▶ requires the Public Service Commission to review and approve a wildland fire protection plan submitted by a qualified utility;
- ▶ provides that a qualified utility may recover, through rates, the capital investments and expenses incurred to implement a wildland fire protection plan;
- ▶ requires a qualified utility to annually report certain capital investments and



26 expenses incurred for the implementation of a wildland fire protection plan to the Public
27 Service Commission;

28 ▶ requires a governing authority of an electric cooperative to review and approve a
29 wildland fire protection plan submitted by an electric cooperative;

30 ▶ provides that a qualified utility or an electric cooperative with an electrical
31 transmission fire protection plan are not considered to have negligently caused a
32 wildland fire under certain circumstances;

33 ▶ modifies the standard of care for a right of action for injuries to trees;

34 ▶ specifies the liability provisions that apply for damages arising from a wildland fire;

35 and

36 ▶ makes technical and conforming changes.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **65A-3-4**, as repealed and reenacted by Laws of Utah 2012, Chapter 361

44 **78B-6-1002**, as renumbered and amended by Laws of Utah 2008, Chapter 3

45 ENACTS:

46 **54-24-101**, Utah Code Annotated 1953

47 **54-24-102**, Utah Code Annotated 1953

48 **54-24-103**, Utah Code Annotated 1953

49 **54-24-201**, Utah Code Annotated 1953

50 **54-24-202**, Utah Code Annotated 1953

51 **54-24-203**, Utah Code Annotated 1953



53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **54-24-101** is enacted to read:

55 **CHAPTER 24. WILDLAND FIRE PLANNING AND COST RECOVERY ACT**

56 **Part 1. General Provisions**

57 **54-24-101. Title.**

58 This chapter is known as the "Wildland Fire Planning and Cost Recovery Act."

59 Section 2. Section **54-24-102** is enacted to read:

60 **54-24-102. Definitions.**

61 As used in this chapter:

62 (1) "Electric cooperative" means an electrical corporation that is a:

63 (a) distribution electrical cooperative; or

64 (b) wholesale electrical cooperative.

65 (2) "Governing authority" means the same as that term is defined in Section [54-15-102](#).

66 (3) "Qualified utility" means the same as that term is defined in Section [54-17-801](#).

67 (4) "Wildland fire protection plan" means a plan submitted to the commission or

68 governing authority in accordance with the requirements of this chapter.

69 Section 3. Section **54-24-103** is enacted to read:

70 **54-24-103. Commission rulemaking authority.**

71 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

72 commission shall make rules to implement this chapter, including:

73 (1) rules establishing procedures for the review and approval of a wildland fire

74 protection plan;

75 (2) rules establishing the procedures for the review and approval of annual

76 expenditures for the implementation of a wildland fire protection plan; and

77 (3) any other rules that the commission determines are necessary to protect the public

78 interest and implement this chapter.

79 Section 4. Section **54-24-201** is enacted to read:

80 **Part 2. Wildland Fire Protection Plans**

81 **54-24-201. Wildland fire protection plan for a qualified utility.**

82 (1) A qualified utility shall prepare a wildland fire protection plan in accordance with

83 the requirements of this chapter.

84 (2) A wildland fire protection plan under Subsection (1) shall include:

85 (a) a description of areas within the service territory of the qualified utility that may be

86 subject to a heightened risk of wildland fire;

87 (b) a description of the procedures, standards, and time frames that the qualified utility

88 will use to inspect and operate its infrastructure;

89 (c) a description of the procedures and standards that the qualified utility will use to
90 perform vegetation management;

91 (d) a description of proposed modifications or upgrades to facilities and preventative
92 programs that the qualified utility will implement to reduce the risk of its electric facilities
93 initiating a wildland fire;

94 (e) a description of procedures for de-energizing power lines and disabling reclosers to
95 mitigate potential wildland fires taking into consideration:

96 (i) the ability of the qualified utility to reasonably access the proposed power line to be
97 de-energized;

98 (ii) the balance of the risk of wildland fire with the need for continued supply of
99 electricity to a community; and

100 (iii) any potential impact to public safety, first responders, and health and
101 communication infrastructure;

102 (f) a description of the procedures the qualified utility intends to use to restore its
103 electrical system in the event of a wildland fire;

104 (g) a description of the costs for the implementation of the plan, including system
105 improvements and upgrades;

106 (h) a description of community outreach and public awareness efforts before and
107 during a wildland fire season; and

108 (i) a description of potential participation, if applicable, with state or local wildland fire
109 protection plans.

110 (3) (a) A qualified utility shall submit the wildland fire protection plan described in this
111 section to the commission:

112 (i) on or before June 1, 2020; and

113 (ii) on or before October 1 of every third year after calendar year 2020.

114 (b) The commission shall:

115 (i) review the plan submitted under Subsection (3)(a); and

116 (ii) consider input from:

117 (A) the State Division of Forestry, Fire, and State Lands created in Section [65A-1-4](#);

118 (B) any other appropriate federal, state, or local entity that chooses to provide input;

119 and

120 (C) other interested persons who choose to provide input.

121 (c) The commission shall approve a wildland fire protection plan submitted under
122 Subsection (3)(a) if the plan:

123 (i) is reasonable and in the public interest; and

124 (ii) appropriately balances the costs of implementing the plan with the risk of a
125 potential wildland fire.

125a **§→ (4) No later than June 1, 2021, and each year after 2021, a qualified utility shall submit**
125b **to the commission a report detailing the qualified utility's compliance with the qualified**
125c **utility's wildland fire protection plan. ←§**

126 Section 5. Section **54-24-202** is enacted to read:

127 **54-24-202. Cost recovery for wildland fire protection plan implementation.**

128 (1) A qualified utility shall recover in rates all prudently incurred investments and
129 expenditures, including the costs of capital, made to implement an approved wildland fire
130 protection plan.

131 (2) A qualified utility shall file an annual report to the commission identifying the
132 actual capital investments and expenses made in the prior calendar year and a forecast of the
133 capital investments and expenses for the present year to implement a wildland fire protection
134 plan approved by the commission under Section [54-24-201](#).

135 (3) The commission shall authorize the deferral and collection of the incremental
136 revenue requirement for the capital investments and expenses:

137 (a) to implement an approved wildland fire protection plan; and

138 (b) not included in base rates.

139 Section 6. Section **54-24-203** is enacted to read:

140 **54-24-203. Wildland fire protection plan for an electric cooperative.**

141 (1) An electric cooperative shall prepare a wildland fire protection plan in accordance
142 with the requirements of this chapter.

143 (2) A wildland fire protection plan under Subsection (1) shall include:

144 (a) a description of areas within the service territory of the electric cooperative that
145 may be subject to a heightened risk of wildland fire;

146 (b) a description of the procedures, standards, and time frames that the electric
147 cooperative will use to inspect and operate its infrastructure;

148 (c) a description of the procedures and standards that the electric cooperative will use
149 to perform vegetation management;

150 (d) a description of proposed modifications or upgrades to facilities and preventative
151 programs that the electric cooperative will implement to reduce the risk of its electric facilities
152 initiating a wildland fire;

153 (e) a description of procedures for de-energizing power lines and disabling reclosers to
154 mitigate potential wildland fires, taking into consideration:

155 (i) the ability of the electric cooperative to reasonably access the proposed power line
156 to be de-energized;

157 (ii) the balance of the risk of wildland fire with the need for continued supply of
158 electricity to a community; and

159 (iii) any potential impact to public safety, first responders, and health and
160 communication infrastructure;

161 (f) a description of the procedures the electric cooperative intends to use to restore its
162 electrical system in the event of a wildland fire; and

163 (g) a description of potential consultation, if applicable, with state or local wildland fire
164 protection plans.

165 (3) (a) An electric cooperative shall submit the wildland fire protection plan described
166 in this section to its governing authority:

167 (i) on or before June 1, 2020; and

168 (ii) on or before October 1 of every third year after calendar year 2020.

169 (b) The governing authority shall:

170 (i) review the plan submitted under Subsection (3)(a); and

171 (ii) consider input from:

172 (A) the Division of Forestry, Fire, and State Lands created in Section [65A-1-4](#);

173 (B) any other appropriate federal, state, or local entity that chooses to provide input;

174 and

175 (C) other interested persons who choose to provide input.

176 (c) The governing authority shall approve a wildland fire protection plan submitted
177 under Subsection (3)(a) if the plan:

178 (i) is reasonable and in the interest of the electric cooperative members; and

179 (ii) appropriately balances the costs of implementing the plan with the risk of a
180 potential wildland fire.

181 (d) An electric cooperative shall file with the commission a wildland fire protection
 182 plan submitted and approved under this section.

183 (4) An electric cooperative shall:

184 (a) file with its governing authority an annual report detailing the electric cooperative's
 185 compliance with the wildland fire protection plan; and

186 (b) file with the commission a copy of the annual compliance report described in
 187 Subsection (4)(a).

188 (5) The commission shall make available for public inspection:

189 (a) a wildland fire protection plan filed under Subsection (3)(d); and

190 (b) an annual compliance report filed under Subsection (4)(b).

191 Section 7. Section **65A-3-4** is amended to read:

192 **65A-3-4. Liability for causing wildland fires.**

193 (1) As used in this section:

194 (a) "Electric cooperative" means the same as that term is defined in Section [54-24-102](#).

195 (b) "Electrical transmission wildland fire protection plan" means a wildland fire
 196 protection plan, as defined in Section [54-24-102](#), that is:

197 (i) prepared and submitted by a qualified utility and approved as provided in Section
 198 [54-24-201](#); or

199 (ii) prepared and submitted by an electric cooperative and approved as provided in
 200 Section [54-24-203](#).

201 (c) "Qualified utility" means the same as that term is defined in Section [54-17-801](#).

202 ~~[(1) A]~~ (2) (a) Except as provided in Subsection (3), a person who negligently,
 203 recklessly, or intentionally causes or spreads a wildland fire shall be liable for the cost of
 204 suppressing that wildland fire, regardless of whether the fire begins on:

205 ~~[(a)]~~ (i) private land;

206 ~~[(b)]~~ (ii) land owned by the state;

207 ~~[(c)]~~ (iii) federal land; or

208 ~~[(d)]~~ (iv) tribal land.

209 ~~[(2)]~~ (b) The conduct described in Subsection ~~[(1)]~~ (2)(a) includes any negligent,
 210 reckless, or intentional conduct, and is not limited to conduct described in Section [65A-3-2](#).

211 (3) In an action under this section to recover for property damage resulting from a

212 wildland fire or to recover the cost of fire suppression resulting from a wildland fire, a qualified
213 utility or electric cooperative may not be considered to have negligently caused a wildland fire
214 if:

215 (a) (i) the electrical transmission wildland fire protection plan of the qualified utility or
216 electric cooperative identifies and addresses the cause of the wildland fire for fire mitigation
217 purposes; and

218 (ii) at the origin of the wildland fire, the qualified utility or electric cooperative has
219 completed the fire mitigation work identified in the electrical transmission wildland fire
220 protection plan, including:

221 (A) inspection, maintenance, and repair activities;

222 (B) modifications or upgrades to facilities or construction of new facilities;

223 (C) vegetation management work; and

224 (D) preventative programs; or

225 (b) (i) the qualified utility or electric cooperative is denied or delayed access to a
226 right-of-way on land owned by the state, a federal agency, or a tribal government after the
227 qualified utility or electric cooperative requests access to the right-of-way to perform
228 vegetation management or fire mitigation work in accordance with an electrical transmission
229 wildland fire protection plan; and

230 (ii) the electrical transmission wildland fire protection plan identifies and addresses the
231 cause of the wildland fire for fire mitigation purposes.

232 [~~3~~] (4) A person who incurs costs to suppress a wildland fire may bring an action
233 under this section to recover those costs.

234 (5) (a) A property owner who suffers damages resulting from a wildland fire may bring
235 an action under this section to recover those damages.

236 (b) An award ~~of~~ for damages to ~~a~~ real property resulting from a
236a wildland fire, including the
237 loss of vegetation, shall be the lesser of:

238 (i) the cost to restore the real property to its pre-wildland fire condition; or

239 (ii) the difference between:

240 (A) the fair market value of the real property before the wildland fire; and

241 (B) the fair market value of the real property after the wildland fire.

242 [~~4~~] (6) A person who suffers damage from a wildland fire may pursue all other legal

243 remedies in addition to seeking damages under Subsection [~~(3)~~] (4) or (5).

244 Section 8. Section **78B-6-1002** is amended to read:

245 **78B-6-1002. Right of action for injuries to trees -- Damage.**

246 ~~[Any]~~ (1) Except as provided in Subsection (2), any person who, without authority,
247 willfully or intentionally cuts down or carries off any wood or underwood, tree or timber, or
248 girdles or otherwise willfully or intentionally injures any tree or timber on the land of another
249 person, or on the street or highway in front of any person's house, town or city lot, or cultivated
250 grounds, or on the commons or public grounds of any city or town, or on the street or highway
251 in front, without lawful authority, is liable to the owner of such land, or to the city or town, for
252 treble the amount of damages which may be assessed in a civil action.

253 (2) (a) The provisions of this section do not apply to injuries to a tree or timber on the
254 land of another arising from a wildland fire.

255 (b) Liability for injuries to a tree or timber on the land of another arising from a
256 wildland fire is determined in accordance with Section [65A-3-4](#).