

1 **WILDLAND FIRE PLANNING AND COST RECOVERY**

2 **AMENDMENTS**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Carl R. Albrecht**

6 Senate Sponsor: Scott D. Sandall

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ grants the Public Service Commission rulemaking authority to enact rules
15 establishing procedures for the review and approval of a wildland fire protection
16 plan;
- 17 ▶ requires a qualified utility and an electric cooperative to prepare and submit for
18 approval a wildland fire protection plan;
- 19 ▶ specifies the information that is required to be included in a wildland fire protection
20 plan;
- 21 ▶ requires the Public Service Commission to review and approve a wildland fire
22 protection plan submitted by a qualified utility;
- 23 ▶ provides that a qualified utility may recover, through rates, the capital investments
24 and expenses incurred to implement a wildland fire protection plan;
- 25 ▶ 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
27 Public 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43 **65A-3-4**, as repealed and reenacted by Laws of Utah 2012, Chapter 361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

52

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
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82

Part 1. General Provisions

54-24-101. Title.

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

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

54-24-102. Definitions.

As used in this chapter:

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

(a) distribution electrical cooperative; or

(b) wholesale electrical cooperative.

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

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

(4) "Wildland fire protection plan" means a plan submitted to the commission or governing authority in accordance with the requirements of this chapter.

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

54-24-103. Commission rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to implement this chapter, including:

(1) rules establishing procedures for the review and approval of a wildland fire protection plan;

(2) rules establishing the procedures for the review and approval of annual expenditures for the implementation of a wildland fire protection plan; and

(3) any other rules that the commission determines are necessary to protect the public interest and implement this chapter.

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

Part 2. Wildland Fire Protection Plans

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

(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.

126 (4) No later than June 1, 2021, and each year after 2021, a qualified utility shall submit
127 to the commission a report detailing the qualified utility's compliance with the qualified utility's
128 wildland fire protection plan.

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

130 **54-24-202. Cost recovery for wildland fire protection plan implementation.**

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

134 (2) A qualified utility shall file an annual report to the commission identifying the
135 actual capital investments and expenses made in the prior calendar year and a forecast of the
136 capital investments and expenses for the present year to implement a wildland fire protection

137 plan approved by the commission under Section 54-24-201.

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

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

141 (b) not included in base rates.

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

143 **54-24-203. Wildland fire protection plan for an electric cooperative.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 (b) The governing authority shall:

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

174 (ii) consider input from:

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

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

177 and

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

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

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

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

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

186 (4) An electric cooperative shall:

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

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

191 (5) The commission shall make available for public inspection:
192 (a) a wildland fire protection plan filed under Subsection (3)(d); and
193 (b) an annual compliance report filed under Subsection (4)(b).
194 Section 7. Section **65A-3-4** is amended to read:
195 **65A-3-4. Liability for causing wildland fires.**
196 (1) As used in this section:
197 (a) "Electric cooperative" means the same as that term is defined in Section [54-24-102](#).
198 (b) "Electrical transmission wildland fire protection plan" means a wildland fire
199 protection plan, as defined in Section [54-24-102](#), that is:
200 (i) prepared and submitted by a qualified utility and approved as provided in Section
201 [54-24-201](#); or
202 (ii) prepared and submitted by an electric cooperative and approved as provided in
203 Section [54-24-203](#).
204 (c) "Qualified utility" means the same as that term is defined in Section [54-17-801](#).
205 ~~[(+)-A]~~ (2) (a) Except as provided in Subsection (3), a person who negligently,
206 recklessly, or intentionally causes or spreads a wildland fire shall be liable for the cost of
207 suppressing that wildland fire, regardless of whether the fire begins on:
208 ~~[(a)]~~ (i) private land;
209 ~~[(b)]~~ (ii) land owned by the state;
210 ~~[(c)]~~ (iii) federal land; or
211 ~~[(d)]~~ (iv) tribal land.
212 ~~[(2)]~~ (b) The conduct described in Subsection ~~[(+)]~~ (2)(a) includes any negligent,
213 reckless, or intentional conduct, and is not limited to conduct described in Section [65A-3-2](#).
214 (3) In an action under this section to recover for property damage resulting from a
215 wildland fire or to recover the cost of fire suppression resulting from a wildland fire, a qualified
216 utility or electric cooperative may not be considered to have negligently caused a wildland fire
217 if:

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

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

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

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

226 (C) vegetation management work; and

227 (D) preventative programs; or

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

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

235 ~~[(3)]~~ (4) A person who incurs costs to suppress a wildland fire may bring an action
236 under this section to recover those costs.

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

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

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

242 (ii) the difference between:

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

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

245 ~~[(4)]~~ (6) A person who suffers damage from a wildland fire may pursue all other legal
246 remedies in addition to seeking damages under Subsection ~~[(3)]~~ (4) or (5).

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

248 **78B-6-1002. Right of action for injuries to trees -- Damage.**

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

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

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