

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

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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           ▶ provides definitions;
- 15           ▶ grants the Public Service Commission rulemaking authority to enact rules  
16 establishing procedures for the review and approval of a wildland fire protection  
17 plan;
- 18           ▶ requires a qualified utility or an electric cooperative to prepare and submit for  
19 approval a wildland fire protection plan;
- 20           ▶ specifies the information that is required to be included in a wildland fire protection  
21 plan;
- 22           ▶ requires the Public Service Commission to review and approve a wildland fire  
23 protection plan submitted by a qualified utility;
- 24           ▶ provides that a qualified utility may recover, through rates, the capital investments  
25 and expenses incurred to implement a wildland fire protection plan;
- 26           ▶ requires a qualified utility to annually report certain capital investments and  
27 expenses incurred for the implementation of a wildland fire protection plan to the



28 Public Service Commission;

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

31       ▶ provides that a qualified utility or an electric cooperative are not deemed to have  
32 negligently, recklessly, or intentionally caused a wildland fire if the qualified utility  
33 or electric cooperative is in compliance with an approved wildland fire protection  
34 plan;

35       ▶ amends the standard of care for a right of action for injuries to trees;

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

37 and

38       ▶ makes technical and conforming changes.

39 **Money Appropriated in this Bill:**

40       None

41 **Other Special Clauses:**

42       None

43 **Utah Code Sections Affected:**

44 AMENDS:

45       **65A-3-4**, as repealed and reenacted by Laws of Utah 2012, Chapter 361

46       **78B-6-1002**, as renumbered and amended by Laws of Utah 2008, Chapter 3

47 ENACTS:

48       **54-24-101**, Utah Code Annotated 1953

49       **54-24-102**, Utah Code Annotated 1953

50       **54-24-103**, Utah Code Annotated 1953

51       **54-24-201**, Utah Code Annotated 1953

52       **54-24-202**, Utah Code Annotated 1953

53       **54-24-203**, Utah Code Annotated 1953



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

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

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

58                                   **Part 1. General Provisions**

59 **54-24-101. Title.**

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

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

62 **54-24-102. Definitions.**

63 As used in this chapter:

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

65 (a) distribution electrical cooperative as defined in Section [54-2-1](#); or

66 (b) wholesale electrical cooperative as defined in Section [54-2-1](#).

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

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

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

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

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

72 **54-24-103. Commission rulemaking authority.**

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

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

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

76 protection plan;

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

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

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

80 interest and implement this part.

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

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

83 **54-24-201. Wildland fire protection plan for a qualified utility.**

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

85 the requirements of this chapter.

86 (2) The wildland fire protection plan described in Subsection (1) shall include:

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

88 subject to a heightened risk of wildland fire;

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

90 will use to inspect and operate its infrastructure;

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

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

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

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

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

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

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

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

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

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

112 (3) (a) A qualified utility shall submit the wildland fire protection plan described in this  
113 section to the commission for review:

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

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

116 (b) The commission shall:

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

118 (ii) consider input from:

119 (A) the State Division of Forestry, Fire, and State Lands; and

120 (B) any other appropriate federal, state, or local entity.

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 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 [54-23-201](#).

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) The wildland fire protection plan described in 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 for review:

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](#); and

173 (B) any other appropriate federal, state, or local entity.

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

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

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

179 (d) (i) An electric cooperative shall file a wildland fire protection plan prepared and  
180 submitted under this section with the commission.

181 (ii) The commission shall make a wildland fire protection plan filed under Subsection  
182 (3)(d)(i) available for public inspection.

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

184 **65A-3-4. Liability for causing wildland fires.**

185 (1) ~~[A]~~ As used in this section:

186 (a) "electric cooperative" has the same meaning as that term is defined in Section  
187 54-24-102;

188 (b) "qualified utility" has the same meaning as that term is defined in Section  
189 54-17-801; and

190 (c) "wildland fire protection plan" means a wildland fire protection plan prepared by a  
191 qualified utility or an electric cooperative and approved in accordance with the requirements of  
192 Section 54-24-201 or 54-24-203.

193 (2) (a) Except as provided in Subsections (2)(b) and (c), a person who negligently,  
194 recklessly, or intentionally causes or spreads a wildland fire shall be liable for the cost of  
195 suppressing that wildland fire, regardless of whether the fire begins on:

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

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

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

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

200 (b) A qualified utility or an electric cooperative shall not be deemed to have  
201 negligently, recklessly, or intentionally caused a wildland fire if the action of the qualified  
202 utility or electric cooperative related to the cause of the wildland fire is found to be in  
203 compliance with a wildland fire protection plan.

204 (c) A qualified utility or electric cooperative shall not be deemed to have negligently,  
205 recklessly, or intentionally caused a wildland fire if:

206 (i) the qualified utility or electric cooperative is otherwise compliant with a wildland  
207 fire protection plan;

208 (ii) the qualified utility or electric cooperative submits or requests access to perform  
209 vegetation management or fire mitigation work in accordance with a wildland fire protection  
210 plan within a designated right-of-way on land controlled by a state or federal agency or a tribal  
211 government; and

212 (iii) the state or federal agency or tribal government denies or delays access to the  
213 right-of-way described in Subsection (2)(c)(ii).

214 ~~[(2)]~~ (3) The conduct described in Subsection ~~[(1)]~~ (2) includes any negligent, reckless,  
215 or intentional conduct, and is not limited to conduct described in Section 65A-3-2.

216 ~~[(3)]~~ (4) A person who incurs costs to suppress a wildland fire may bring an action  
217 under this section to recover those costs.

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

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

222 (i) the cost to restore the damage to the real property; or

223 (ii) the difference between:

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

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

226 ~~[(4)]~~ (6) A person who suffers damage from a wildland fire may pursue all other legal  
227 remedies in addition to seeking damages under Subsection ~~[(3)]~~ (4) or (5).

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

229 **78B-6-1002. Right of action for injuries to trees -- Damage.**

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

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

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