

**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

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

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

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

36 and

37       ▶ makes technical and conforming changes.

38 **Money Appropriated in this Bill:**

39       None

40 **Other Special Clauses:**

41       None

42 **Utah Code Sections Affected:**

43 AMENDS:

44       **65A-3-4**, as repealed and reenacted by Laws of Utah 2012, Chapter 361

45       **78B-6-1002**, as renumbered and amended by Laws of Utah 2008, Chapter 3

46 ENACTS:

47       **54-24-101**, Utah Code Annotated 1953

48       **54-24-102**, Utah Code Annotated 1953

49       **54-24-103**, Utah Code Annotated 1953

50       **54-24-201**, Utah Code Annotated 1953

51       **54-24-202**, Utah Code Annotated 1953

52       **54-24-203**, Utah Code Annotated 1953



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

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

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

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**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 the requirements of this chapter.

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

(a) a description of areas within the service territory of the qualified utility that may be subject to a heightened risk of wildland fire;

88 (b) a description of the procedures, standards, and time frames that the qualified utility  
89 will use to inspect and operate its infrastructure;

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

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

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

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

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

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

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

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

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

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

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

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

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

115 (b) The commission shall:

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

117 (ii) consider input from:

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

- 119 (B) any other appropriate federal, state, or local entity.
- 120 (c) The commission shall approve a wildland fire protection plan submitted under
- 121 Subsection (3)(a) if the plan:
- 122 (i) is reasonable and in the public interest; and
- 123 (ii) appropriately balances the costs of implementing the plan with the risk of a
- 124 potential wildland fire.

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

126 **54-24-202. Cost recovery for wildland fire protection plan implementation.**

127 (1) A qualified utility shall recover in rates all prudently incurred investments and

128 expenditures, including the costs of capital, made to implement an approved wildland fire

129 protection plan.

130 (2) A qualified utility shall file an annual report to the commission identifying the

131 actual capital investments and expenses made in the prior calendar year and a forecast of the

132 capital investments and expenses for the present year to implement a wildland fire protection

133 plan approved by the commission under Section [54-23-201](#).

134 (3) The commission shall authorize the deferral and collection of the incremental

135 revenue requirement for the capital investments and expenses:

- 136 (a) to implement an approved wildland fire protection plan; and
- 137 (b) not included in base rates.

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

139 **54-24-203. Wildland fire protection plan for an electric cooperative.**

140 (1) An electric cooperative shall prepare a wildland fire protection plan in accordance

141 with the requirements of this chapter.

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

143 (a) a description of areas within the service territory of the electric cooperative that

144 may be subject to a heightened risk of wildland fire;

145 (b) a description of the procedures, standards, and time frames that the electric

146 cooperative will use to inspect and operate its infrastructure;

147 (c) a description of the procedures and standards that the electric cooperative will use

148 to perform vegetation management;

149 (d) a description of proposed modifications or upgrades to facilities and preventative

150 programs that the electric cooperative will implement to reduce the risk of its electric facilities  
151 initiating a wildland fire;

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

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

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

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

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

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

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

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

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

168 (b) The governing authority shall:

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

170 (ii) consider input from:

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

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

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

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

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

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

180 (ii) The commission shall make a wildland fire protection plan filed under Subsection

181 (3)(d)(i) available for public inspection.

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

183 **65A-3-4. Liability for causing wildland fires.**

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

185 (b) "Electrical transmission wildland fire protection plan" means a wildland fire  
186 protection plan, as defined in Section 54-24-102, that is:

187 (i) prepared and submitted by a qualified utility and approved as provided in Section  
188 54-24-201; or

189 (ii) prepared and submitted by an electric cooperative and approved as provided in  
190 Section 54-24-203.

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

192 ~~[(+)-A]~~ (2) (a) Except as provided in Subsection (2)(b), a person who negligently,  
193 recklessly, or intentionally causes or spreads a wildland fire shall be liable for the cost of  
194 suppressing that wildland fire, regardless of whether the fire begins on:

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

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

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

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

199 (b) A qualified utility or electric cooperative may not be considered to have negligently  
200 caused a wildland fire if:

201 (i) the action of the qualified utility or electric cooperative that directly causes the  
202 wildland fire is found to be in compliance with an electrical transmission wildland fire  
203 protection plan; or

204 (ii) (A) the qualified utility or electric cooperative is denied or delayed access to a  
205 right-of-way on land owned by the state, a federal agency, or a tribal government after the  
206 qualified utility or electric cooperative requests access to the right-of-way to perform  
207 vegetation management or fire mitigation work in accordance with an electrical transmission  
208 wildland fire protection plan; and

209 (B) the action of the qualified utility or electric cooperative that directly causes the  
210 wildland fire is otherwise in compliance with an electrical transmission wildland fire protection  
211 plan.

212 ~~[(2)]~~ (3) The conduct described in Subsection ~~[(1)]~~ (2) includes any negligent, reckless,  
213 or intentional conduct, and is not limited to conduct described in Section 65A-3-2.

214 ~~[(3)]~~ (4) A person who incurs costs to suppress a wildland fire may bring an action  
215 under this section to recover those costs.

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

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

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

221 (ii) the difference between:

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

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

224 ~~[(4)]~~ (6) A person who suffers damage from a wildland fire may pursue all other legal  
225 remedies in addition to seeking damages under Subsection ~~[(3)]~~ (4) or (5).

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

227 **78B-6-1002. Right of action for injuries to trees -- Damage.**

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

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

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