

## HB0066S02 compared with HB0066S01

~~deleted text~~ shows text that was in HB0066S01 but was deleted in HB0066S02.

inserted text shows text that was not in HB0066S01 but was inserted into HB0066S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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;

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- ▶ 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 expenses incurred for the implementation of a wildland fire protection plan to the Public Service Commission;
- ▶ requires a governing authority of an electric cooperative to review and approve a wildland fire protection plan submitted by an electric cooperative;
- ▶ provides that a qualified utility or an electric cooperative with an electrical transmission fire protection plan are not ~~deemed~~ considered to have negligently, recklessly, or intentionally caused a wildland fire ~~if the qualified utility or electric cooperative is in compliance with an approved wildland fire protection plan~~ under certain circumstances;
- ▶ amends the standard of care for a right of action for injuries to trees;
- ▶ specifies the liability provisions that apply for damages arising from a wildland fire; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**65A-3-4**, as repealed and reenacted by Laws of Utah 2012, Chapter 361

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

ENACTS:

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

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

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54-24-103, Utah Code Annotated 1953

54-24-201, Utah Code Annotated 1953

54-24-202, Utah Code Annotated 1953

54-24-203, Utah Code Annotated 1953

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

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

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

#### **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.

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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;
  - (b) a description of the procedures, standards, and time frames that the qualified utility will use to inspect and operate its infrastructure;
  - (c) a description of the procedures and standards that the qualified utility will use to perform vegetation management;
  - (d) a description of proposed modifications or upgrades to facilities and preventative programs that the qualified utility will implement to reduce the risk of its electric facilities initiating a wildland fire;
  - (e) a description of procedures for de-energizing power lines and disabling reclosers to mitigate potential wildland fires taking into consideration:
    - (i) the ability of the qualified utility to reasonably access the proposed power line to be de-energized;
    - (ii) the balance of the risk of wildland fire with the need for continued supply of electricity to a community; and
    - (iii) any potential impact to public safety, first responders, and health and communication infrastructure;
  - (f) a description of the procedures the qualified utility intends to use to restore its electrical system in the event of a wildland fire;
  - (g) a description of the costs for the implementation of the plan, including system improvements and upgrades;
  - (h) a description of community outreach and public awareness efforts before and during a wildland fire season; and
  - (i) a description of potential participation, if applicable, with state or local wildland fire protection plans.

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

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

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

(b) The commission shall:

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

(ii) consider input from:

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

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

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

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

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

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

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

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

(2) A qualified utility shall file an annual report to the commission identifying the actual capital investments and expenses made in the prior calendar year and a forecast of the capital investments and expenses for the present year to implement a wildland fire protection plan approved by the commission under Section 54-23-201.

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

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

(b) not included in base rates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The governing authority shall:

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

(ii) consider input from:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (A) the ~~action~~ electrical transmission wildland fire protection plan of the qualified utility or electric cooperative ~~that directly causes~~ identifies and addresses the cause of the wildland fire ~~is found to be in compliance with an~~ for fire mitigation purposes; and

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(B) at the origin of the wildland fire, the qualified utility or electric cooperative has completed the fire mitigation work identified in the electrical transmission wildland fire protection plan, including inspection, maintenance, and repair activities, modifications or upgrades to facilities or construction of new facilities, vegetation management work, and preventative programs; or

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

(B) the ~~fraction of the qualified utility or electric cooperative that directly causes the wildland fire is otherwise in compliance with an~~ electrical transmission wildland fire protection plan identifies and addresses the cause of the wildland fire for fire mitigation purposes.

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

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

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

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

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

(ii) the difference between:

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

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

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

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

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

~~[Any] (1)~~ Except as provided in Subsection (2), any person who, without authority,



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willfully or intentionally cuts down or carries off any wood or underwood, tree or timber, or girdles or otherwise willfully or intentionally injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, town or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front, without lawful authority, is liable to the owner of such land, or to the city or town, for treble the amount of damages which may be assessed in a civil action.

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

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