

SENATE BILL REPORT

SB 5039

As of February 20, 2023

Title: An act relating to mitigating the risk of wildfires through electric utility planning and identification of best management practices appropriate to each electric utility's circumstances.

Brief Description: Mitigating the risk of wildfires through electric utility planning and identification of best management practices appropriate to each electric utility's circumstances.

Sponsors: Senators Rolfes, Conway, Gildon, Hasegawa, Keiser, Kuderer, Nguyen, Nobles and Wellman.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/11/23, 2/07/23 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/22/23.

Brief Summary of First Substitute Bill

- Directs the Department of Natural Resources, in consultation with the Energy Resilience and Emergency Management Office, to contract with a consultant to recommend an electric utility wildfire mitigation plan (plan) format and identify a list of elements to be included in the plans by April 1, 2024.
- Requires each utility to review, revise, and adopt its plan by October 31, 2024, and every three years thereafter.
- Directs the Utility Wildland Fire Prevention Advisory Committee to meet at least twice a year; provide updates on required tasks; develop recommendations for strengthening state agency coordination of wildland fire risk reduction, prevention, and suppression; and host electric utility plans on its website.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5039 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; Boehnke, Lovick, Trudeau and Wellman.

Minority Report: Do not pass.

Signed by Senator Short.

Minority Report: That it be referred without recommendation.

Signed by Senator MacEwen, Ranking Member.

Staff: Kimberly Cushing (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Mahnur Khan (786-7437)

Background: Wildland Fire Advisory Committee. The Wildland Fire Advisory Committee (WFA Committee) was created in 2015. The WFA Committee advises the Commissioner of Public Lands (commissioner) on all matters related to wildland firefighting in the state. This includes developing strategies to enhance the safe and effective use of private and public wildland firefighting resources.

Utility Wildland Fire Prevention Advisory Committee. In 2019, the Legislature directed the commissioner to establish an Electric Utility Wildland Fire Prevention Task Force (task force). The task force was comprised of people with expertise in wildland fire risk reduction and prevention, a representative of both small and industrial forest landowners, and entities providing retail electric service.

In 2021, the Legislature directed the commissioner to convene a Utility Wildland Fire Prevention Advisory Committee (advisory committee) by August 1, 2021. The duties of the advisory committee are to advise the Department of Natural Resources (DNR) on issues including:

- matters related to the implementation of recommendations of the task force;
- providing a forum for electric utilities, DNR, and other fire suppression organizations of the state to identify and develop solutions to issues of wildfire prevention and risk;
- mitigation specifically related to electric utilities' transmission and distribution networks, identification of best management practices, electric utility infrastructure protection, and wildland fire suppression and response; and
- establishing joint public communications protocols among members of the advisory committee, and other entities, to inform residents of potential critical fire weather events and the potential for power outages or disruptions.

Utilities and Transportation Commission. In 2021 and 2022, the Utilities and Transportation Commission (UTC) held workshops on utility wildfire preparedness. In November 2022, the three investor-owned electric utilities (IOUs) presented about the effectiveness of their fire mitigation and communication plans, lessons learned, and planned changes for the following wildfire season.

Summary of Bill (First Substitute): The Legislature intends to identify best practices guidelines to reduce the risk of and prevent wildland fires that may be ignited by electric utility equipment, and to promote transparency, require that electric utilities make their wildfire mitigation plans public.

Electric Utility Wildfire Mitigation Plans. DNR, in consultation with the Energy Resilience and Emergency Management Office (Office) located within the Department of Commerce, must contract with an independent consultant to recommend an electric utility wildfire mitigation plan (plan) format, and to identify and list elements to be included in plans. The consultant must have experience developing plans. The Office must seek input from the UTC, the advisory committee, electric utilities, the state fire marshal, the Governor's Office of Indian Affairs, and the public.

The recommended elements must acknowledge utilities serve areas that vary in topography, vegetation, population, and other characteristics, and that the best practices guidelines within each element must recognize a utility's plan will be designed to fit site-specific circumstances. The recommended element must include, but are not limited to:

- vegetation management along transmission and distribution lines and near associated equipment;
- infrastructure inspection and maintenance repair activities and schedules;
- modification or upgrades to facilities and construction of new facilities to incorporate cost-effective measures to minimize fire risk;
- prevention programs, including adoption of new technologies to harden infrastructure;
- operational procedures;
- identification of appropriate widths for vegetation management and rights-of-way, including the consideration of fire-resistant vegetation alternatives; and
- public engagement and communication plans addressing wildfire safety and risk mitigation.

The recommended format and list of elements must be forwarded to the UTC, Office, and all electric utilities for a review period of three months prior to finalizing the format and list of elements the utilities will use to adopt or update their plan. By April 1, 2024, DNR must make public a recommended plan format and a list of elements. DNR may update these guidelines if needed, but not more than once a year.

DNR must:

- provide technical assistance to electric utilities to support the inclusion of these guidelines in the revisions of their plans; and
- submit to the Legislature, by December 31, 2024, a compilation and summary of existing plans maintained by electric utilities.

Electric Utilities. Each IOU and consumer-owned utility (COU) must review, revise, if appropriate, and adopt its plan by October 31, 2024, and every three years thereafter. When reviewing or revising a plan, an IOU or COU must use the recommended format and elements.

Local fire protection districts must be provided the opportunity to provide input for each plan. Each IOU must provide their plan to DNR to review, along with a list and description of wildland fires involving utility equipment within its customer service area over the previous two years as reported by DNR.

The governing board of each COU must review the plan. Local fire districts must also be given the opportunity to provide input on the plan. After the governing board's review, the COU must provide a copy of the plan to DNR along with a list and description of wildland fires involving utility equipment within its customer service area over the previous two years as reported by DNR. A COU is not prohibited from reviewing or updating its plan more often than once a year, nor is it required to submit a plan more often than once every three years.

Two or more abutting COUs may codevelop a plan and may identify areas of common implementation, which will assist in implementing the identified recommended elements.

DNR is not liable for a utility's implementation of its plan. DNR's review of a plan, and any recommendations associated with the review do not constitute a reasonableness review or approval of recovery of any measure, investment, cost, or other component of the plan.

IOUs and COUs must submit their plans to the advisory committee to be posted on its website and are encouraged to submit any 2023 plans to the advisory committee advisory committee prior to October 31, 2024.

Utility Wildland Fire Prevention Advisory Committee. The advisory committee must provide updates on the ongoing implementation of the recommendations from the task force every three years, starting May 30, 2024. The committee must develop recommendations for strengthening the state agency coordination of wildfire risk reduction, prevention, and suppression, and in doing so seek the views of the WFA Committee, the Office, and the UTC. The committee must host electric utility plans on its website.

The advisory committee chair must schedule and hold meetings on a regular basis, at a minimum of twice per year but not more than four times per year, to expeditiously accomplish these duties and make recommendations.

The Commissioner must invite one representative from the Office and one from the UTC to join the advisory committee. Advisory committee membership may also include people the Commissioner deems appropriate to carry out the functions of the committee. A lack of volunteers or applicants for any category of membership will not prevent the advisory committee from meeting and conducting its business.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Directs DNR in consultation with Office, rather than the Office by itself, to hire an independent consultant to develop a plan format and list of elements, rather than list of actions.
- Removes protocols for disabling reclosers and deenergizing portions of the electric system from the list of recommended elements.
- Requires the advisory committee to create a website to host plans that are required to be submitted by the electric utilities.
- Removes the requirement that the UTC—for the IOUs , and Office—for the COUs, review and confirm that the recommended elements are included plans.
- Requires the IOUs to submit their plans to DNR to review and provide local fire protection districts with an opportunity to provide input for each plan.
- Authorizes a utility to redact information about sensitive or critical infrastructure prior to submission of the plan for review or posting.
- Removes language stating that the nothing in the act may be construed to relieve a utility from proactively managing wildfire risk.
- Directs the Committee to meet at a minimum twice a year but no more than four times a year, and to provide updates on the ongoing implementation of the recommendations from the Electric Utility Wildland Fire Prevention Task Force every three years starting May 30, 2024.
- Removes the requirement that DNR analyze the costs and benefits of preparing and maintaining a statewide wildland fire risk map.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: Washington State is already feeling the impacts of climate change, with an increased number of natural disasters including wildfires. These fires have large lasting

effects. There is a need for improved communication and coordination among governmental agencies to reduce the risks of wildfires. The bill intends to guide governmental agencies in the creation of a plan in the event of a wildfire as well as prevention. DNR should oversee the planning process instead of Commerce because they have the most experience. The point of the bill is to create a plan about the elements needed to reduce the risk of fire, with the details left to the Advisory Committee. We have concerns about the unintended consequences of a wildfire risk map that could increase insurance rates. The bill aptly recognizes that while plans share common elements, they must be appropriate to each utility's circumstances. We don't want overly prescriptive legislation.

OTHER: The Office is the lead agency for how state responds to an energy emergency. The bill deals with what a utility has to do to mitigate the risk of wildfire and when a utility might also have to take action because they are in the middle of a wildfire and need to make difficult decisions. These decisions should be made pursuant to community planning. There are currently no requirements for utilities to publish their wildfire plans. DNR works closely with utility partners to reduce wildfire risk. There is a role for the Advisory Committee in assisting how mitigation plans are developed. We recognized Commerce's role in energy resilience.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Christine Rolfes, Prime Sponsor; Sherri Dysart, League of Women Voters of Washington; Jim Smith, Klickitat PUD; John Rothlin, Avista Corp; Andy Barth, Inland Power & Light; Colin Willenbrock, Pend Oreille.

OTHER: Jasmine Vasavada, Washington Department of Commerce; Brian Considine, Washington State Department of Natural Resources.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.