

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Public utilities-wildfire protection plans and liability.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to public utilities; requiring public
2 utilities to prepare wildfire mitigation plans;
3 establishing a process by which utilities may submit
4 wildfire mitigation plans to the public service commission
5 for approval; specifying rate recovery for implementing
6 approved wildfire mitigation plans; specifying limits for
7 liability and damages for public utilities related to
8 wildfires; requiring rulemaking; and providing for
9 effective dates.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

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3 STAFF COMMENT

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5 This version of the bill draft reflects the language
6 provided by the stakeholders at the Committee's October
7 meeting. Per the Committee's direction, this was drafted as
8 the stakeholders submitted it at the October meeting.

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10 The amendments that were proposed are not included within
11 the text of this bill draft; they are included in a
12 separate document and divided by line and page number.

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17 Section 1. 37-3-401 through 37-3-405 are created to
18 read:

19
20 ARTICLE 4

21 WILDFIRE MITIGATION

22
23 37-3-401. Definitions.

24
25 (a) As used in this article:

26
27 (i) "Economic loss" means the pecuniary loss
28 resulting from medical expenses, business interruption,
29 loss of business, property damage loss, replacement
30 services loss, loss due to death and burial costs to the

1 extent recovery for the loss is allowed under the laws of
2 Wyoming;

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6 STAFF COMMENT

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8 For clarity, the Committee may wish to consider the
9 following addition to the definition of "economic loss"
10 above:

11

12 (i) "Economic loss" means pecuniary loss,
13 including losses resulting from medical expenses, business
14 interruption, loss of business, property damage loss,
15 replacement services loss, loss due to death and burial
16 costs to the extent recovery for the loss is allowed under
17 the laws of Wyoming;

18

19 Wyoming law for crime-victim compensation uses the
20 following definition for "economic loss" (W.S. 1-40-
21 102(a)(v)):

22

23 (v) "Economic loss" means and includes medical
24 and hospital expenses, loss of earnings, loss of future
25 earnings resulting from the injury, funeral and burial
26 expenses and loss of support to the dependents of the
27 victim to include home maintenance and child care;

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31

32 (ii) "Electric utility" means any person,
33 including cooperative electric utilities as defined by W.S.
34 37-1-101(a)(vi)(C), that is authorized to engage in
35 business in Wyoming and that is primarily engaged in the
36 generation, transmission or sale of electric energy.

1 "Electric utility" shall not include any electric utility
2 owned or operated by a city or town;

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5 *****

6 **STAFF COMMENT**

7
8 **Cooperative electric utilities are not defined under W.S.**
9 **37-1-101(a)(vi)(C) (produced below); the referenced**
10 **subparagraph refers broadly to electric generation and**
11 **transmission facilities.**

12
13 (vi) "Public utility" means and includes every
14 person that owns, operates, leases, controls or has power
15 to operate, lease or control:

16
17 (C) Any plant, property or facility for the
18 generation, transmission, distribution, sale or furnishing
19 to or for the public of electricity for light, heat or
20 power, including any conduits, ducts or other devices,
21 materials, apparatus or property for containing, holding or
22 carrying conductors used or to be used for the transmission
23 of electricity for light, heat or power;

24
25 **The definition of "cooperative electric utility" from W.S.**
26 **37-17-101(a)(i) is included below. The Committee may wish**
27 **to consider whether that definition should be used when**
28 **referencing to cooperative electric utilities.**

29
30 **37-17-101. Definitions.**

31
32 (a) As used in this article:

33
34 (i) "Cooperative electric utility" means any
35 nonprofit, member-owned cooperative engaged in the business
36 of distributing energy, including any energy related
37 commodity currently approved under rules and regulations of
38 the public service commission and any future energy related
39 commodities approved by the public service commission, in
40 the state of Wyoming;

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4 (iii) "Wildfire" means an unplanned, unwanted
 5 fire burning in any area that may impact, damage or cause
 6 harm to any area, including but not limited to natural
 7 resources, agricultural resources, homes and property and
 8 that threatens lives and safety within the state of
 9 Wyoming;

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 12 *****
 13 **STAFF COMMENT**

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 15 **For clarity, the Committee may wish to consider an**
 16 **alternate definition of wildfire (the definition produced**
 17 **below reorganizes the provided language and removes the**
 18 **prospective component "may impact, damage or cause harm":**

19
 20 (iii) "Wildfire" means an unplanned, unwanted
 21 fire burning in any area that impacts, damages or harms any
 22 area, natural resource, agricultural resource, home or
 23 property and that threatens public welfare and safety
 24 within Wyoming;

25
 26 **The Committee may also wish to consider the definition of**
 27 **"wildfire" used in Utah's law:**

28
 29 (iii) "Wildfire" means any unplanned or
 30 uncontrolled fire in the state alleged to have been caused
 31 by a public utility;

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1 (iv) "Wildfire mitigation plan" means a plan
2 submitted to and approved by the commission;

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6 STAFF COMMENT

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8 For the definition of "wildfire mitigation plan," the
9 Committee may wish to consider whether a reference to an
10 "approved" plan should be included given the discretion
11 that utilities have in applying for approval of the plan.

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16 37-3-402. Wildfire mitigation plans; commission
17 authority.

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19 The commission may promulgate rules to implement this
20 article, including rules establishing procedures and
21 requirements for the filing, review and approval of
22 wildfire mitigation plans and any other rules that the
23 commission determines are necessary to protect the public
24 interest.

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28 STAFF COMMENT

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30 For W.S. 37-3-402 above, the Committee may wish to
31 consider:

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- How the discretionary language above ("may") comports with Section 2 of this bill draft (which provides that the Public Service Commission "shall" promulgate rules).
- Whether the Commission's rulemaking authority should be narrowed (i.e., something narrower than any other rules "necessary to protect the public interest" to, for example, "necessary to protect the public from wildfire damage").

For W.S. 37-3-403 below, the Committee may wish to consider whether:

- Wildfire protection plans must be published or provided to the public (i.e., online or otherwise), regardless of whether the plan is submitted for Commission approval.
- Plans must be submitted to the Commission for filing/notice purposes, or for purposes of ensuring compliance with the requirement to prepare a wildfire mitigation plan (regardless of whether the plan is submitted for PSC approval).
- Some penalty or other consequence should be specified for not preparing a plan.
- Components of the plan (particularly those specified in paragraphs (a)(ii) through (iv) below) should be tied to wildfire risk.
- A date for completing wildfire mitigation plans should be specified (regardless of whether the plan is submitted for approval).

37-3-403. Electric utilities; wildfire mitigation plans; contents.

1 (a) Each electric utility may prepare a wildfire
2 mitigation plan that shall include, at a minimum:

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6 STAFF COMMENT

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8 Because the language providing for the preparation of
9 mitigation plans is discretionary ("may" prepare a wildfire
10 mitigation plan), the Committee may wish to consider the
11 following for (a)(intro):

12

13 (a) Each electric utility may prepare a wildfire
14 mitigation plan for submission and implementation in
15 accordance with this article. Any wildfire mitigation plan
16 prepared under this article shall include, at a minimum:

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20

21 (i) A description of the electric utility's
22 service territory and the areas within the service
23 territory or rights-of-way that may be subject to a
24 heightened risk of wildfire;

25

26 (ii) A description of the procedures, standards
27 and schedules that the electric utility will use to inspect
28 and operate its transmission and distribution
29 infrastructure, if any;

30

1 (iii) A description of the procedures and
2 standards that the electric utility will use to perform
3 vegetation management;

4

5 (iv) A description of proposed modifications,
6 replacements and upgrades to facilities and preventative
7 programs that the electric utility will implement to reduce
8 the risk of its electric facilities initiating a wildfire;

9

10 (v) A description of how the electric utility's
11 wildfire mitigation strategies and policies have changed in
12 the immediately preceding five (5) years;

13

14 (vi) A description of how the electric utility
15 will coordinate with other electric utilities regarding any
16 shared facilities;

17

18 (vii) A description of procedures for de-
19 energizing power lines and disabling reclosers to mitigate
20 potential fires, including:

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STAFF COMMENT

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For (vii)(intro) above, the Committee may wish to consider replacing (or adding) the word "procedures" with another word like "considerations."

(A) The ability of the electric utility to reasonably access the proposed power line to be de-energized;

(B) Balancing the risk of wildfire with the need for the continued supply of electricity to a community;

(C) Any potential impact that de-energizing lines may have on the resilience of the remainder of the electric utility's transmission and distribution facilities, if any;

(D) The need to provide notice to customers and the public before, where possible, or soon after de-energization;

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STAFF COMMENT

The Committee may wish to consider whether some more specific time should be specified to give meaning to "soon after" used in subparagraph (D) above.

(E) Any need to communicate and coordinate with any other electric utilities that may be impacted by a de-energization and any plans to accomplish communications, including communications with transmission operators, reliability coordinators and cooperative member systems;

(F) Any potential impact to public safety.

(viii) A description of the procedures the electric utility intends to use to restore its electrical system in the event of a wildfire;

(ix) For electric utilities whose rates are regulated by the commission, a description of the estimated incremental costs and potential associated rate impacts for the implementation of the wildfire mitigation plan, including system improvements and upgrades;

1 (x) A description of community outreach and
2 public awareness efforts before and during the wildfire
3 season, particularly in areas impacted by wildfires or de-
4 energizations;

5

6 (xi) A description of potential participation
7 with emergency coordinators, if applicable.

8

9 **37-3-404. Wildfire mitigation plans; commission**
10 **approval.**

11

12 (a) An electric utility may apply to the commission
13 for approval of a wildfire mitigation plan.

14

15 (b) Upon receiving an application for approval of a
16 wildfire mitigation plan, the commission shall approve the
17 plan if the plan is reasonable, in the public interest and
18 appropriately balances the costs of implementing the plan
19 with the risks of a potential wildfire. For electric
20 utilities whose rates are regulated by the commission,
21 approval of a wildfire mitigation plan shall not confer to
22 the electric utility the right to recover the costs
23 associated with the wildfire mitigation plan. An electric

1 utility whose rates are regulated by the commission may
 2 seek, and the commission may authorize, cost recovery for
 3 the costs associated with implementing a wildfire
 4 mitigation plan through rate cases or other separate
 5 filings.

6

7 (c) If an electric utility submits a plan that is
 8 approved by the commission, the electric utility shall
 9 submit subsequent or updated plans to the commission not
 10 later than every fifth year or as ordered by the
 11 commission.

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 15 STAFF COMMENT
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17 The Committee may wish to consider specifying:

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- 19 • Whether the Commission must review and approve
 20 subsequently submitted plans for electric utilities
 21 that previously submitted plans for approval. If so,
 22 whether the standard specified above is the standard
 23 that the Commission should use to review and approve
 24 updated plans.
- 25 • Whether the standards listed in subsection (b) above
 26 need further clarity.
- 27 • Whether an electric utility that previously submitted
 28 a plan may discontinue submission or updating of a
 29 plan (given the discretionary language that allows
 30 utility to submit a plan in the first place in
 31 subsection (a) above).

- 1 • Whether the Commission may deny a plan or otherwise
- 2 order an electric utility to modify or resubmit a plan
- 3 (and, if so, under what conditions the Commission may
- 4 take one or both of those actions).
- 5 • Whether further clarity is needed in the last two
- 6 sentences of subsection (b) above (i.e., the approval
- 7 of a plan doesn't automatically convey the right to
- 8 rate recovery for plan expenses, which must be sought
- 9 as public utilities normally seek rate recovery).

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14 (d) Not later than June 1 in the year following any
 15 year in which the commission approves a wildfire mitigation
 16 plan under this section, an electric utility shall file an
 17 annual report with the commission detailing the electric
 18 utility's compliance with the approved wildfire mitigation
 19 plan. Not later than sixty (60) days after receiving an
 20 annual report, the commission may initiate a proceeding to
 21 evaluate whether the electric utility is in substantial
 22 compliance with the approved wildfire mitigation plan. If
 23 the commission takes no action within sixty (60) days of
 24 receiving the annual report, the electric utility shall be
 25 presumed to be in substantial compliance with the approved
 26 wildfire mitigation plan.

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28 **37-3-405. Wildfire mitigation plans; recovery of**
 29 **costs.**

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2 (a) Except as otherwise provided in this section, for
3 commission-approved wildfire mitigation plans there shall
4 be a presumption in any civil action that the approved
5 wildfire mitigation plan is a reasonable and prudent
6 preparation for, and mitigation of, wildfire risk.

7

8 (b) A plaintiff may recover economic loss from an
9 electric utility as a result of a wildfire only if the
10 plaintiff shows one (1) or more of the following by a
11 preponderance of the evidence:

12

13 (i) The electric utility failed to substantially
14 comply with an approved wildfire mitigation plan, and that
15 failure was the actual and proximate cause of the damages
16 to the plaintiff. For purposes of this paragraph, an
17 electric utility shall be deemed to have substantially
18 complied with the wildfire mitigation plan if the electric
19 utility attempted in good faith to comply with the plan but
20 was denied or delayed access to a right-of-way after the
21 electric utility requested access to the right-of-way to
22 perform vegetation management or fire mitigation work in
23 accordance with the plan;

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 STAFF COMMENT
 For paragraph (i) above, the Committee may wish to consider the following language in lieu of the final sentence of the paragraph (i.e., what if the company fell far short of its obligations under a wildfire mitigation plan for reasons or other obligations not related to delayed access).

(i) The electric utility failed to substantially comply with an approved wildfire mitigation plan, and that failure was the actual and proximate cause of the damages to the plaintiff. For purposes of this paragraph, a finding that an electric utility did not substantially comply with the wildfire mitigation plan shall not be solely based on a failure to perform vegetation management or fire mitigation work where the electric utility attempted to perform the management or work but was denied or delayed access to the right-of-way;

(ii) The electric utility acted with malice or criminal intent, and the electric utility's action was the actual and proximate cause of the damages to the plaintiff.

(c) The following shall apply in any civil action that a plaintiff brings against an electric utility for damages caused by wildfire:

1 (i) An action against an electric utility for
2 damages caused by a wildfire shall only be brought not
3 later than four (4) years after the date of the ignition of
4 the wildfire;

5
6 (ii) A plaintiff may recover economic losses;

7
8 (iii) No plaintiff shall recover noneconomic
9 losses unless the plaintiff suffered bodily injury from
10 wildfire;

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14 STAFF COMMENT

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16 For paragraph (iii) above, the Committee may wish to
17 reference the death of the plaintiff (the plaintiff
18 suffered bodily injury or died from a wildfire) to account
19 for Article 10, Section 4(a) of the Wyoming Constitution
20 (which prohibits the legislature from enacting a law
21 "limiting the amount of damages to be recovered for causing
22 the injury or death of any person").

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26
27 (iv) For purposes of calculating damages, the
28 value of real or personal property, including any
29 vegetation on real property, shall be the lesser of:

30

1 (A) The costs to restore the property to the
2 property's pre-wildfire condition; or

3
4 (B) The difference between the productive
5 value of the property immediately before the wildfire and
6 the productive value of the property immediately after the
7 wildfire.

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10 *****
11 STAFF COMMENT

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13 The term "productive value" does not appear to be currently
14 defined in Wyoming's statutes. It appears in two places:
15 W.S. 39-13-103(b)(viii) and (xii)(A)(I), where the term is
16 tied to agricultural land or property. A brief search of
17 Wyoming's administrative rules did not yield a definition
18 of this term.

19
20 The Committee may wish to consider whether a definition of
21 "productive value" should be included in this bill draft.

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26 (v) Nothing in this section shall be construed to
27 limit any defenses that an electric utility may be entitled
28 to raise in a civil action for damages caused by wildfire.

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32 STAFF COMMENT

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The Committee may wish to consider the following for the section above:

- Whether further clarity is needed to specify whether an electric utility that elects not to prepare or submit a wildfire mitigation plan may enjoy the presumptions and liability limits specified in the section.
- Whether there is a need to clarify what happens in terms of presumptions and limits if an electric utility does not submit an updated plan for approval as required.
- The effect of the liability limits and presumptions if the Public Service Commission does not approve a submitted plan or updated plan.

Section 2. The public service commission shall promulgate any rules necessary to implement this act.

Section 3.

(a) Except as provided in subsection (b) of this section, this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(b) Section 1 of this act is effective July 1, 2025.

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(END)