

IN THE SENATE

SENATE BILL NO. 1124

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO WILDFIRE MITIGATION STANDARD OF CARE; AMENDING TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 18, TITLE 61, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING WILDFIRE MITIGATION STANDARD OF CARE; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 18, Title 61, Idaho Code, and to read as follows:

CHAPTER 18
WILDFIRE STANDARD OF CARE ACT

61-1801. SHORT TITLE. This chapter shall be known and may be cited as the "Wildfire Standard of Care Act."

61-1802. LEGISLATIVE INTENT. In enacting this chapter, it is the intent of the legislature to provide for the safe, efficient, and reliable generation, transmission, and distribution of electric power at affordable rates and in such ways that protect the public interest, health, safety, and welfare. Preparation for and response to wildfire risk is an increasingly important element of planning conducted by electric utilities. Proper preparation is crucial to position electric utilities to avoid and respond to wildfire risk. Knowing what measures should be taken to minimize wildfire risk before it occurs and to respond to it when it does occur is central to the affordable, safe, and reliable transmission and distribution of electricity. It is essential to ensure these risks are addressed as needed and within appropriate cost parameters so that electric power is kept affordable to the public. This chapter is designed to direct the prudent use of resources by electric utilities to mitigate and respond to wildfire risk within the costs that can be justified as just and reasonable in order to keep rates affordable to utility customers.

61-1803. WILDFIRE MITIGATION PLANS. (1) For the purposes of this chapter, "commission" means the Idaho public utilities commission.

(a) Each electric corporation that is a public utility as defined in sections 61-119 and 61-129, Idaho Code, shall adopt and file a wildfire mitigation plan with the commission for its review and approval pursuant to section 61-1804, Idaho Code. The commission shall order the plans be filed at a date determined by it and may stagger filing dates.

(b) An electric corporation that is not a public utility, including but not limited to a cooperative association distributing electric power to its members or a municipal electric distribution system under section

1 50-342, Idaho Code, may file a wildfire mitigation plan with the commis-
2 sion for its review at any time permitted by the commission. If such a
3 plan is filed, the commission may assess reasonable fees to the electri-
4 cal corporation that is not a public utility for its review. The fee may
5 not exceed the actual reasonable cost incurred by the commission for the
6 review and consideration of a plan submitted to it.

7 (2) Each wildfire mitigation plan shall be developed using approaches
8 and methods that are reflective of and commensurate with the size and com-
9 plexity of the electric corporation's operations and of the nature of the
10 fire risk. At a minimum, each wildfire mitigation plan shall:

11 (a) Describe a means for mitigating wildfire risk that reflects a rea-
12 sonable balancing of mitigation costs with the resulting reduction of
13 wildfire risk;

14 (b) Describe the areas where an electric corporation has infrastruc-
15 ture or equipment that the electric corporation considers may be sub-
16 ject to a heightened risk of wildfire at the time the wildfire mitiga-
17 tion plan is finalized by the electric corporation;

18 (c) Describe preventative actions and programs that the electric cor-
19 poration will carry out to reduce the risk of wildfire;

20 (d) Describe community outreach and public awareness efforts that the
21 electric corporation will use before, during, and after wildfire sea-
22 son;

23 (e) Describe the outreach efforts to coordinate with federal, state,
24 tribal, and local officials and agencies on wildfire preparedness and
25 emergency response plans;

26 (f) Consider financially prudent and reasonably practicable methods of
27 line design for new and existing planned lines;

28 (g) Describe a means for monitoring forecasted and current weather data
29 for the purpose of assessing current and anticipated fire risk; and

30 (h) Describe and develop standards, procedures, and schedules, sub-
31 ject to timely approval of access to rights-of-way, if necessary, for
32 the following actions:

33 (i) Inspection of the electric corporation's assets, infra-
34 structure, and facilities within the areas that are identified as
35 heightened fire risk areas in the wildfire mitigation plan, where
36 financially prudent and reasonably practicable;

37 (ii) De-energization of the electric corporation's power lines,
38 if considered appropriate by the electric corporation; and

39 (iii) Vegetation management within the areas that are identified
40 as heightened fire risk areas in the wildfire mitigation plan and
41 are within the electric corporation's rights-of-way or are adja-
42 cent thereto and threaten the power lines or other electric corpo-
43 ration infrastructure.

44 (3) Wildfire mitigation plans approved by the commission shall be re-
45 viewed and updated no less frequently than every three (3) years. The plans
46 shall be updated, filed, and approved in accordance with this section and
47 section 61-1804, Idaho Code.

48 (4) An electric corporation with a commission-approved wildfire miti-
49 gation plan shall submit a report to the commission updating the commission
50 on the electric corporation's compliance with its wildfire mitigation plan

1 on an annual basis or on such other basis as the commission may prescribe by
2 rule or order, but no more frequently than annually.

3 61-1804. COMMISSION REVIEW OF WILDFIRE MITIGATION PLANS. (1) The com-
4 mission shall review a wildfire mitigation plan or an update thereto and, af-
5 ter notice and comment, within six (6) months of receiving such filing, shall
6 approve or reject the plan. In reviewing the plan, the commission shall en-
7 sure that it meets the minimum requirements stated in section 61-1803, Idaho
8 Code, and shall consider the following factors:

9 (a) The consistency of the plan with the public health, safety, and wel-
10 fare;

11 (b) The feasibility of the plan and the cost of its implementation; and

12 (c) The degree to which the plan adequately minimizes wildfire risk and
13 proposes to respond to wildfires that do occur.

14 (2) In reviewing a plan, the commission shall consult with the Idaho
15 state forester for technical assistance.

16 61-1805. EFFECT OF WILDFIRE MITIGATION PLANS. (1) In any civil action,
17 a commission-approved plan shall be deemed to be a reasonable and prudent
18 plan to establish adequate measures for the electric corporation to prepare
19 for and address wildfire risk and shall establish the electric corporation's
20 duty to its members and the public.

21 (2) An electric corporation that is not a public utility, including
22 but not limited to a cooperative association distributing electric power
23 to its members or a municipal electric distribution system pursuant to sec-
24 tion 50-342, Idaho Code, that chooses not to file a wildfire mitigation plan
25 with the commission pursuant to section 61-1803, Idaho Code, may develop
26 a wildfire mitigation plan for its own use. In any civil action, if it is
27 determined by a court that the plan meets the criteria set forth in section
28 61-1803(2), Idaho Code, deference shall be given to the provisions of the
29 wildfire mitigation plan and to any plan approved by the commission under
30 section 61-1804, Idaho Code, for electric corporations with similar risk
31 profiles, and, absent evidence to the contrary, the plan shall establish the
32 electric corporation's duty to its members and the public.

33 61-1806. LIABILITY. (1) For the purposes of this section, "substan-
34 tial compliance" or "substantially comply" means a reasonable good faith ef-
35 fort by an electric corporation to adhere to the elements or metrics of its
36 wildfire mitigation plan and allows for minor deviations or omissions.

37 (2) An electric corporation that substantially complies with a com-
38 mission-approved wildfire mitigation plan and whose acts or omissions are
39 not an intentional tort or willful or reckless misconduct, as that term is
40 defined in section 6-1601, Idaho Code, may not be found liable in any civil
41 action brought to recover damages or impose liability, including for death
42 of or injury to persons or property, resulting from any unplanned or uncon-
43 trolled fire, or for any action or omission taken in substantial compliance
44 with the wildfire mitigation plan, including omissions where an electric
45 corporation ceases to take action that was originally included in a wildfire
46 mitigation plan but removed from the plan in a later plan approved by the
47 commission.

1 (3) If an electric corporation fails to substantially comply with an
2 essential element of a commission-approved wildfire mitigation plan and
3 that failure is the actual and proximate cause of harm to the plaintiff, then
4 a plaintiff seeking damages in any civil action may only recover:

5 (a) Such actual economic damages for property loss as expressly pro-
6 vided in section 38-107(2), Idaho Code; and

7 (b) Damages for personal injury subject to the limitations expressly
8 provided in section 6-1603, Idaho Code.

9 (4) If an electric corporation fails to substantially comply with an
10 essential element of a commission-approved wildfire mitigation plan and
11 that failure is the actual and proximate cause of harm to the plaintiff, and
12 its act or omission constitutes an intentional tort or willful or reckless
13 misconduct, as that term is defined in section 6-1601, Idaho Code, then a
14 plaintiff in any civil action may only recover:

15 (a) Such actual economic damages for property loss as expressly pro-
16 vided for in section 38-107(2), Idaho Code;

17 (b) Economic and noneconomic damages for personal injury subject to
18 section 6-1603, Idaho Code; and

19 (c) Punitive damages, if otherwise allowable pursuant to section
20 6-1604, Idaho Code, subject to the limitations expressly provided
21 therein.

22 61-1807. DENIAL OF ACCESS TO RIGHTS-OF-WAY. If an electric corpora-
23 tion is denied or delayed access to privately-owned land or an easement or
24 right-of-way on land owned by the state, a federal agency, or a tribal gov-
25 ernment after the electric corporation requests access to the easement or
26 right-of-way to perform vegetation management or fire mitigation work in
27 accordance with a wildfire mitigation plan or to upgrade or repair the elec-
28 tric corporation's assets, infrastructure, or facilities and such denial
29 or delay prevents the electric corporation from doing timely or sufficient
30 vegetation management and fuel clearance within the electric corporation's
31 rights-of-way or from performing any upgrade to or inspection or repair of
32 the electric corporation's assets, infrastructure, and facilities, the
33 electric corporation shall not be held liable in any civil action for damages
34 that are directly or indirectly caused by failing to act.

35 61-1808. EXCLUSIVE REMEDY. Except to the extent title 72, Idaho Code,
36 is applicable, the civil actions identified in section 61-1806, Idaho Code,
37 shall be the exclusive civil remedies available against an electric corpora-
38 tion for injury resulting from any unplanned or uncontrolled fire or for any
39 act or omission related to a wildfire mitigation plan. This section does not
40 limit an insurer's ability to exercise valid subrogation rights subject to
41 the liability framework established in section 61-1806, Idaho Code.

42 61-1809. IMMUNITY. The commission and its employees, when acting
43 within the course and scope of their employment and without malice or crim-
44 inal intent, shall not be liable for any claim arising out of approval of a
45 wildfire mitigation plan as provided pursuant to chapter 9, title 6, Idaho
46 Code.

1 SECTION 2. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2025.