

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0693.01 Megan Waples x4348

SENATE BILL 21-170

SENATE SPONSORSHIP

Hisey and Ginal,

HOUSE SPONSORSHIP

Arndt and Lynch,

Senate Committees
Transportation & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING STANDARDS APPLICABLE TO COOPERATIVE ELECTRIC
102 ASSOCIATION WILDLAND FIRE MITIGATION, AND, IN CONNECTION
103 THEREWITH, REQUIRING WILDLAND FIRE PROTECTION PLANS,
104 PROVIDING AUTHORITY FOR VEGETATION MANAGEMENT, AND
105 LIMITING COOPERATIVE ELECTRIC ASSOCIATION LIABILITY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires a cooperative electric association (association) to adopt a wildland fire protection plan. The plan must include information

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

on:

- Areas where the association has powerline facilities that may have an increased risk of wildland fires;
- The procedures and standards that the association will use to inspect and operate its powerline facilities and perform vegetation management around those facilities;
- The modifications or upgrades that the association will implement to reduce risks of wildland fires;
- The procedures for de-energizing powerline facilities to mitigate potential wildland fires;
- Community outreach efforts during the wildland fire season; and
- The potential for coordination with other wildland fire protection plans.

An association must file its wildland fire protection plan with the public utilities commission every 3 years and must submit an annual report to the commission detailing its compliance with the plan.

The bill allows, but does not require, an association to remove or partially remove vegetation outside of a powerline facility easement as necessary following a major weather event or other emergency situation. In addition, an association may designate vegetation as "hazard vegetation" if the association finds that the vegetation is dead, likely to fail, or likely to fall, sway, or grow into a powerline facility and finds that the vegetation is likely to cause substantial damage, disrupt service, or come within a minimum clearance distance of the powerline facility. An association may, but is not required to, remove or partially remove hazard vegetation outside of an easement after providing notice to the landowner. The association is not required to provide notice if removal of the hazard vegetation is necessary to continue safe operation of its facilities or if the removal is done as part of trimming or removing vegetation after a storm or other emergency event.

If vegetation outside of a powerline facility easement dies as the result of being trimmed or partially removed by an association, the landowner may request that the association remove the vegetation at the association's expense. The association is required to remove the vegetation within ninety days; except that the association may offer and the landowner may accept payment for the reasonable cost of removal instead of the association removing the vegetation.

An association is not liable for personal injury, property damage, or fire suppression costs resulting from a wildland fire if any of the following apply:

- The association filed a wildland fire protection plan and completed the activities described in it;
- A landowner failed to control vegetation outside of a powerline facility easement on the landowner's land;

- The association requested and was denied access to perform vegetation management in a right-of-way on land owned by a local government, the state, a federal agency, or a tribal agency; or
- A landowner prevented the association from maintaining its powerline facility easement or from removing hazard vegetation outside the easement.

If none of those circumstances apply and an association is found liable for a wildland fire, the prevailing plaintiff is limited to actual damages and cannot recover noneconomic, punitive, or exemplary damages.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 4 to article 9.5 of title 40 as follows:

PART 4

COOPERATIVE ELECTRIC ASSOCIATION

WILDLAND FIRE MITIGATION ACT

40-9.5-401. Short title. THE SHORT TITLE OF THIS PART 4 IS THE "COOPERATIVE ELECTRIC ASSOCIATION WILDLAND FIRE MITIGATION ACT".

40-9.5-402. Definitions. AS USED IN THIS PART 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO.

(2) "COOPERATIVE ELECTRIC ASSOCIATION" MEANS A NONPROFIT ELECTRIC CORPORATION OR ASSOCIATION BUT DOES NOT INCLUDE A NONPROFIT GENERATION AND TRANSMISSION ELECTRIC CORPORATION OR ASSOCIATION.

(3) "HAZARD VEGETATION" MEANS, FOR PURPOSES OF VEGETATION MANAGEMENT, ANY VEGETATION, WHETHER LOCATED INSIDE OR OUTSIDE THE BOUNDARY OF A POWERLINE FACILITY EASEMENT, THAT HAS BEEN

1 DESIGNATED BY A COOPERATIVE ELECTRIC ASSOCIATION TO BE:

2 (a) DEAD, LIKELY TO DIE OR FAIL, OR IN A POSITION THAT, UNDER
3 GEOGRAPHICAL OR ATMOSPHERIC CONDITIONS, COULD CAUSE THE
4 VEGETATION OR OTHER NEARBY VEGETATION TO FALL, SWAY, OR GROW
5 INTO A POWERLINE FACILITY BEFORE THE NEXT ROUTINE VEGETATION
6 MANAGEMENT CYCLE; AND

7 (b) LIKELY TO CAUSE SUBSTANTIAL DAMAGE TO THE POWERLINE
8 FACILITY, DISRUPT POWERLINE FACILITY SERVICE, COME WITHIN TEN FEET
9 OF THE POWERLINE FACILITY, CAUSE OTHER VEGETATION TO COME WITHIN
10 TEN FEET OF THE POWERLINE FACILITY, OR COME WITHIN THE MINIMUM
11 VEGETATION CLEARANCE DISTANCE AS DETERMINED IN ACCORDANCE
12 WITH APPLICABLE RELIABILITY AND SAFETY STANDARDS FOR THE
13 POWERLINE FACILITY.

14 (4) "POWERLINE FACILITY" MEANS ELECTRIC DISTRIBUTION OR
15 TRANSMISSION LINES AND ALL APPURTENANCES TO THOSE LINES
16 SUPPORTING CONDUCTORS OF ONE OR MORE ELECTRIC CIRCUITS OF ANY
17 VOLTAGE FOR THE TRANSMISSION OF ELECTRIC ENERGY, OVERHEAD
18 GROUND WIRES, AND COMMUNICATIONS EQUIPMENT THAT SUPPORTS
19 OPERATION AND MAINTENANCE OF ELECTRIC DISTRIBUTION OR
20 TRANSMISSION LINES.

21 (5) "POWERLINE FACILITY EASEMENT" MEANS ANY RECORDED OR
22 UNRECORDED EASEMENT, PRESCRIPTIVE RIGHT, OR PUBLIC RIGHT-OF-WAY
23 ACQUIRED BY A COOPERATIVE ELECTRIC ASSOCIATION FOR THE SITING OF
24 POWERLINE FACILITIES.

25 (6) "VEGETATION" MEANS ANY TREE, BRUSH, SHRUB, OR OTHER
26 PLANT, OR ANY PART THEREOF.

27 (7) "WILDLAND AREA" MEANS AN AREA IN WHICH DEVELOPMENT

1 IS ESSENTIALLY NONEXISTENT, EXCEPT FOR ROADS, RAILROADS, POWER
2 LINES, AND SIMILAR INFRASTRUCTURE, AND IN WHICH STRUCTURES, IF
3 PRESENT, ARE WIDELY SCATTERED.

4 (8) "WILDLAND FIRE" MEANS AN UNPLANNED OR UNWANTED FIRE
5 IN A FOREST LAND, RANGELAND, WILDLAND AREA, OR AN AREA IN THE
6 WILDLAND-URBAN INTERFACE, INCLUDING AN UNAUTHORIZED
7 HUMAN-CAUSED FIRE, AN OUT-OF-CONTROL PRESCRIBED FIRE, AND ANY
8 OTHER FIRE IN A FOREST LAND, RANGELAND, WILDLAND AREA, OR AN AREA
9 IN THE WILDLAND-URBAN INTERFACE, WHERE THE OBJECTIVE IS TO
10 EXTINGUISH THE FIRE.

11 **40-9.5-403. Wildland fire protection plans.** (1) A COOPERATIVE
12 ELECTRIC ASSOCIATION SHALL PREPARE A WILDLAND FIRE PROTECTION
13 PLAN IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

14 (2) A WILDLAND FIRE PROTECTION PLAN DEVELOPED PURSUANT TO
15 SUBSECTION (1) OF THIS SECTION MUST INCLUDE:

16 (a) A DESCRIPTION OF AREAS WHERE THE COOPERATIVE ELECTRIC
17 ASSOCIATION HAS POWERLINE FACILITIES THAT MAY BE SUBJECT TO A
18 HEIGHTENED RISK OF WILDLAND FIRE. SUCH AREAS MAY BE DETERMINED
19 BY REFERENCE TO ANY STATEWIDE WILDFIRE RISK MAP ADOPTED BY THE
20 COLORADO STATE FOREST SERVICE FOR USE IN CONNECTION WITH
21 WILDLAND FIRE PROTECTION PLANS;

22 (b) A DESCRIPTION OF THE PROCEDURES, STANDARDS, AND TIME
23 FRAMES THAT THE COOPERATIVE ELECTRIC ASSOCIATION WILL USE TO
24 INSPECT AND OPERATE ITS POWERLINE FACILITIES;

25 (c) A DESCRIPTION OF THE PROCEDURES AND STANDARDS THAT
26 THE COOPERATIVE ELECTRIC ASSOCIATION WILL USE TO PERFORM
27 VEGETATION MANAGEMENT AROUND ITS POWERLINE FACILITIES;

1 (d) A DESCRIPTION OF PROPOSED MODIFICATIONS OR UPGRADES TO
2 POWERLINE FACILITIES AND PREVENTATIVE PROGRAMS THAT THE
3 COOPERATIVE ELECTRIC ASSOCIATION WILL IMPLEMENT TO REDUCE THE
4 RISK OF ITS POWERLINE FACILITIES INITIATING A WILDLAND FIRE;

5 (e) A DESCRIPTION OF PROCEDURES FOR DE-ENERGIZING
6 POWERLINE FACILITIES AND DISABLING RECLOSERS TO MITIGATE
7 POTENTIAL WILDLAND FIRES, TAKING INTO CONSIDERATION:

8 (I) THE ABILITY OF THE COOPERATIVE ELECTRIC ASSOCIATION TO
9 REASONABLY ACCESS THE PROPOSED POWERLINE TO BE DE-ENERGIZED;

10 (II) THE ABILITY OF THE COOPERATIVE ELECTRIC ASSOCIATION TO
11 MODIFY ITS PROTECTIVE DEVICES TO ADDRESS WILDLAND FIRE CONCERNS;

12 (III) THE BALANCE OF THE RISK OF A WILDLAND FIRE WITH THE
13 NEED FOR CONTINUED SUPPLY OF ELECTRICITY TO A COMMUNITY; AND

14 (IV) ANY POTENTIAL IMPACT TO PUBLIC SAFETY, FIRST
15 RESPONDERS, AND HEALTH AND COMMUNICATION INFRASTRUCTURE;

16 (f) A DESCRIPTION OF COMMUNITY OUTREACH AND PUBLIC
17 AWARENESS EFFORTS BEFORE AND DURING A WILDLAND FIRE SEASON;

18 (g) A DESCRIPTION OF POTENTIAL COORDINATION, IF APPLICABLE,
19 WITH OTHER WILDLAND FIRE PROTECTION PLANS; AND

20 (h) A CERTIFICATION THAT THE WILDLAND FIRE PROTECTION PLAN
21 ADOPTED BY THE COOPERATIVE ELECTRIC ASSOCIATION HAS BEEN
22 REVIEWED AND APPROVED BY THE COOPERATIVE ELECTRIC ASSOCIATION'S
23 BOARD OF DIRECTORS.

24 (3) A COOPERATIVE ELECTRIC ASSOCIATION SHALL SUBMIT THE
25 WILDLAND FIRE PROTECTION PLAN DESCRIBED IN THIS SECTION TO THE
26 COMMISSION:

27 (a) ON OR BEFORE JUNE 1, 2022; AND

1 (b) ON OR BEFORE OCTOBER 1 OF EVERY THIRD YEAR AFTER
2 CALENDAR YEAR 2022.

3 (4) ON OR BEFORE JUNE 1, 2023, AND ON OR BEFORE JUNE 1 OF
4 EACH YEAR THEREAFTER, A COOPERATIVE ELECTRIC ASSOCIATION SHALL
5 SUBMIT TO THE COMMISSION A REPORT DETAILING THE COOPERATIVE
6 ELECTRIC ASSOCIATION'S COMPLIANCE WITH ITS WILDLAND FIRE
7 PROTECTION PLAN.

8 (5) THE COMMISSION SHALL ACCEPT WILDLAND FIRE PROTECTION
9 PLANS AND SUBSEQUENT REPORTS ON AN INFORMATIONAL BASIS ONLY.
10 THE COMMISSION SHALL NOT HOLD ANY HEARINGS OR MAKE ANY
11 DECISION ON THE CONTENTS OF THE PLANS.

12 **40-9.5-404. Rules for trimming, removing, and controlling**
13 **vegetation outside an easement.** (1) NOTWITHSTANDING ANY OTHER
14 PROVISION OF LAW TO THE CONTRARY, THE FOLLOWING RULES APPLY TO
15 THE TRIMMING, REMOVING, AND CONTROLLING OF VEGETATION OUTSIDE
16 OF A POWERLINE FACILITY EASEMENT BY A COOPERATIVE ELECTRIC
17 ASSOCIATION:

18 (a) A COOPERATIVE ELECTRIC ASSOCIATION MAY, BUT IS NOT
19 REQUIRED TO, REMOVE OR PARTIALLY REMOVE VEGETATION AS
20 NECESSARY FOLLOWING A MAJOR WEATHER EVENT OR OTHER EMERGENCY
21 SITUATION; AND

22 (b) A COOPERATIVE ELECTRIC ASSOCIATION MAY, BUT IS NOT
23 REQUIRED TO, PARTIALLY OR COMPLETELY REMOVE ANY HAZARD
24 VEGETATION, SUBJECT TO THE FOLLOWING REQUIREMENTS:

25 (I) THE COOPERATIVE ELECTRIC ASSOCIATION SHALL NOTIFY THE
26 OWNER OR OCCUPIER OF LAND, IF AVAILABLE, AT LEAST FOURTEEN DAYS
27 PRIOR TO SUCH REMOVAL; EXCEPT THAT, THE COOPERATIVE ELECTRIC

1 ASSOCIATION IS NOT REQUIRED TO PROVIDE SUCH NOTICE IF:

2 (A) THE COOPERATIVE ELECTRIC ASSOCIATION DEEMS THE
3 REMOVAL TO BE IMMEDIATELY NECESSARY TO CONTINUE THE SAFE AND
4 RELIABLE OPERATION OF ITS POWERLINE FACILITIES; OR

5 (B) THE COOPERATIVE ELECTRIC ASSOCIATION REMOVES OR
6 PARTIALLY REMOVES THE VEGETATION AS PART OF REMOVAL OPERATIONS
7 AFTER A MAJOR WEATHER EVENT OR OTHER EMERGENCY SITUATION
8 PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION;

9 (II) IF ANY VEGETATION LOCATED OUTSIDE OF A POWERLINE
10 FACILITY EASEMENT THAT IS TRIMMED BY A COOPERATIVE ELECTRIC
11 ASSOCIATION DIES WITHIN THREE MONTHS AS A RESULT OF THE TRIMMING,
12 THE OWNER OR OCCUPIER OF LAND UPON WHICH THE VEGETATION WAS
13 TRIMMED MAY REQUEST IN WRITING THAT THE COOPERATIVE ELECTRIC
14 ASSOCIATION REMOVE THE VEGETATION AT THE COOPERATIVE ELECTRIC
15 ASSOCIATION'S EXPENSE. THE COOPERATIVE ELECTRIC ASSOCIATION SHALL
16 COMPLETE REMOVAL OF THE VEGETATION WITHIN NINETY DAYS OF
17 RECEIVING THE REQUEST; EXCEPT THAT THE ASSOCIATION MAY OFFER AND
18 THE LAND OWNER OR OCCUPIER MAY ACCEPT PAYMENT FOR THE
19 REASONABLE COST OF REMOVAL IN LIEU OF THE ASSOCIATION COMPLETING
20 REMOVAL.

21 (III) REMOVAL OF HAZARD VEGETATION INCLUDES CUTTING THE
22 STUMP AS CLOSE TO THE GROUND AS PRACTICABLE. A COOPERATIVE
23 ELECTRIC ASSOCIATION IS NOT RESPONSIBLE FOR STUMP REMOVAL.

24 (2) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS
25 REQUIRING ANY COOPERATIVE ELECTRIC ASSOCIATION TO FULLY EXERCISE
26 THE AUTHORITIES GRANTED IN THIS SECTION.

27 **40-9.5-405. Liability for wildland fires.** (1) NOTWITHSTANDING

1 ANY OTHER PROVISION OF LAW TO THE CONTRARY, A COOPERATIVE
2 ELECTRIC ASSOCIATION IS NOT LIABLE FOR ANY PERSONAL INJURY,
3 PROPERTY DAMAGE, OR FIRE SUPPRESSION COSTS RESULTING FROM A
4 WILDLAND FIRE IF ANY OF THE FOLLOWING CIRCUMSTANCES APPLY:

5 (a) THE COOPERATIVE ELECTRIC ASSOCIATION SUBMITTED A
6 WILDLAND FIRE PROTECTION PLAN UNDER SECTION 40-9.5-403 AND, AT
7 TIME OF ORIGIN OF THE WILDLAND FIRE, THE COOPERATIVE ELECTRIC
8 ASSOCIATION HAS COMPLETED THE ACTIVITIES DESCRIBED IN THE
9 WILDLAND FIRE PROTECTION PLAN;

10 (b) A LANDOWNER FAILS TO CONTROL VEGETATION OUTSIDE A
11 POWERLINE FACILITY EASEMENT ON THE LANDOWNER'S LAND;

12 (c) THE COOPERATIVE ELECTRIC ASSOCIATION IS DENIED OR
13 DELAYED ACCESS TO A RIGHT-OF-WAY ON LAND OWNED BY A LOCAL
14 GOVERNMENT, THE STATE, A FEDERAL AGENCY, OR A TRIBAL
15 GOVERNMENT AFTER THE COOPERATIVE ELECTRIC ASSOCIATION REQUESTS
16 ACCESS TO THE RIGHT-OF-WAY TO PERFORM VEGETATION MANAGEMENT
17 OR FIRE MITIGATION WORK IN ACCORDANCE WITH A WILDLAND FIRE
18 PROTECTION PLAN; OR

19 (d) A LANDOWNER OR OCCUPIER PREVENTS THE COOPERATIVE
20 ELECTRIC ASSOCIATION FROM MAINTAINING ITS POWERLINE FACILITY
21 EASEMENT OR REMOVING HAZARD VEGETATION OUTSIDE THE EASEMENT.

22 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
23 CONTRARY, IF SUBSECTION (1) OF THIS SECTION DOES NOT APPLY AND A
24 COOPERATIVE ELECTRIC ASSOCIATION IS FOUND LIABLE FOR A WILDLAND
25 FIRE, A PREVAILING PLAINTIFF MAY RECOVER ONLY ITS ACTUAL ECONOMIC
26 DAMAGES AND IS NOT ENTITLED TO NONECONOMIC, PUNITIVE, OR
27 EXEMPLARY DAMAGES.

1 **SECTION 2. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, or safety.