

2026 South Dakota Legislature

Senate Bill 36**AMENDMENT 36B
FOR THE SENATE COMMERCE AND ENERGY ENGROSSED
BILL**

An Act to authorize utilities to establish wildfire mitigation plans and associated liability limitations for wildfire damages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 49:

Terms used in this chapter mean:

- (1) "Approval authority," in the case of an electric cooperative, its board of directors, or in the case of a municipal utility, its city council or city commission, as the case may be;
- (2) "Commission," the Public Utilities Commission of the State of South Dakota;
- (3) "Economic loss," monetary loss, including losses resulting from medical expenses, business interruption, loss of business, loss of use of property, and loss due to death and burial costs;
- (4) "Qualified utility," includes:
 - (a) Any electric utility defined in subdivision 49-34A-1(7); and
 - (b) Any person who is a wholesale generator of electricity and who operates electrical transmission;
- (5) "Wildfire," an unplanned, unwanted fire burning in this state that:
 - (a) May impact, damage, or cause harm, including to natural resources, agricultural resources, homes, and property; or
 - (b) Threatens lives and safety; and
- (6) "Wildfire mitigation plan," a plan submitted to and approved or published by the approval authority in accordance with the requirements of this chapter.

Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 49:

A qualified utility that is not an electric cooperative or municipal utility may submit a wildfire mitigation plan to the commission for filing and publishing. The commission shall

1 file and publish on its website all wildfire mitigation plans submitted to it within one
2 hundred twenty days of receipt. ~~Any wildfire mitigation plan or amendment submitted to~~
3 ~~the commission must be accompanied by a five hundred dollar filing fee to be deposited~~
4 ~~in the gross receipts tax fund established by § 49-1A-1.~~ An amendment to a qualified
5 utility's wildfire mitigation plan may also be submitted pursuant to this chapter and is
6 subject to the same process and requirements.

7 A wildfire mitigation plan submitted to the commission must contain an attestation
8 signed by an officer of the utility submitting the plan. The attestation must contain a
9 statement certifying that the plan contains all provisions required by this chapter.
10 Publication of a wildfire mitigation plan or annual report by the commission is a
11 determination that the wildfire mitigation plan contains the statutory elements and is
12 complete.

13 The commission may promulgate rules, pursuant to chapter 1-26, to further
14 implement the provisions of this section.

15 A qualified utility that is an electric cooperative or a municipal utility may submit a
16 wildfire mitigation plan to its approval authority for review and approval. The approval
17 authority shall act upon a submitted wildfire mitigation plan within one hundred twenty
18 days of submission. If approved, the electric cooperative or municipal utility must publish
19 the wildfire mitigation plan on its website.

20 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 49:**

21 A qualified utility with a published wildfire mitigation plan shall submit an annual
22 report detailing the qualified utility's compliance with its wildfire mitigation plan for the
23 previous calendar year to the commission or to its approval authority, no later than June
24 first of each year. ~~Annual reports submitted to the commission must be accompanied by~~
25 ~~a two hundred fifty dollar filing fee to be deposited in the gross receipts tax fund~~
26 ~~established by § 49-1A-1.~~ The commission shall file and publish the report within sixty
27 days of receipt. The electric cooperative or municipal utility shall publish the report on its
28 website within sixty days of filing with the approval authority. The wildfire mitigation plan
29 is valid and current if it is on file and all annual reports are timely filed with the commission
30 or approval authority. The qualified utility shall file an update to the wildfire mitigation
31 plan at least once every five years.

32 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 49:**

33 A wildfire mitigation plan must include, at a minimum:

- (1) A description of areas within the service territory or facility locations of the qualified utility, which may be subject to a heightened risk of wildfire;
- (2) A description of the procedures or strategies, standards, and time frames that the qualified utility will use to inspect and operate its infrastructure;
- (3) A description of the procedures or strategies, and standards that the qualified utility will use to perform vegetation management;
- (4) A description of the procedures or strategies for modifications or upgrades to electric facilities and preventative programs to reduce the risk of its electric facilities initiating a wildfire;
- (5) A description of considerations or strategies for de-energizing power lines or modifying electric facility operations to mitigate potential wildfires, taking into consideration:
 - (a) The ability of the qualified utility to reasonably access the proposed powerline to be de-energized;
 - (b) The balance of the risk of wildfire with the need for continued supply of electricity to a community; and
 - (c) Any potential impact to public safety and first responders, as applicable;
- (6) A description of the procedures or strategies the qualified utility intends to use to restore its electrical system in the event of a wildfire;
- (7) A description of the estimated incremental costs, if any, for the implementation of the plan, including system improvements and upgrades;
- (8) A description of community outreach and public awareness efforts before and during a wildfire season; and
- (9) A description of coordination with applicable state or local wildfire agencies.

Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 49:

The commission may authorize a public utility as defined in subdivision 49-34A-1(12) to recover in rates all prudently incurred investments and expenditures, including the costs of capital, made to implement an approved wildfire mitigation plan.

Cost recovery for wildfire mitigation plan implementation may be allowed by the commission, notwithstanding any settlement agreement provisions that restrict a public utility's ability to seek rate relief.

Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 49:

1 A standard of strict liability may not be applied to a qualified utility in any cause of
2 action alleging that the qualified utility caused wildfire-related damages. A qualified
3 utility's facilities and activities may not be considered ultra-hazardous or abnormally
4 dangerous.

5 A plaintiff's sole remedy against a qualified utility for damages and losses resulting
6 from a wildfire is in this chapter.

7 Except as otherwise provided in this section, there is a rebuttable presumption in
8 any civil action that a valid and current wildfire mitigation plan is a reasonable and prudent
9 preparation for, and mitigation of, wildfire risk. A plaintiff may recover damages from a
10 qualified utility with a valid and current wildfire mitigation plan, as a result of a wildfire,
11 only if the plaintiff proves one or more of the following by a preponderance of the
12 evidence:

13 (1) The qualified utility failed to substantially comply with an essential element of a
14 valid and current wildfire mitigation plan, and that failure was the actual and
15 proximate cause of the damages to the plaintiff. For purposes of this subdivision,
16 a qualified utility is deemed to have substantially complied with its wildfire
17 mitigation plan if the qualified utility attempted to comply with the plan but was
18 denied or delayed access to a right-of-way after the qualified utility requested
19 access to the right-of-way to perform vegetation management or fire mitigation
20 work in accordance with the plan; or

21 (2) The qualified utility acted with malice or criminal intent, and the qualified utility's
22 malicious action or criminal intent was the actual and proximate cause of the
23 damages to the plaintiff.

24 A civil action filed against a qualified utility for damages caused by wildfire may
25 only be brought within three years after the date of the initial ignition of the wildfire.

26 A plaintiff in a civil action filed against a qualified utility for damages caused by
27 wildfire may recover economic losses and property damages but only under the conditions
28 of this chapter. The plaintiff may not recover noneconomic losses unless the plaintiff
29 suffered death or visible bodily injury in the form of a burn from a wildfire.

30 The plaintiff may not recover punitive damages unless it is proven by clear and
31 convincing evidence that the qualified utility acted with malice or criminal intent and the
32 qualified utility's malicious action or criminal intent was the actual and proximate cause of
33 damages to the plaintiff.

34 The amount of damages recoverable for damage to real or personal property is the
35 lesser of the cost to restore the property to the property's pre-wildfire condition or the

1 difference between the fair market value of the property immediately before the wildfire
2 and the fair market value of the property after the wildfire.

3 Nothing in this section may be construed to limit any defenses that a qualified
4 utility may be entitled to raise in a civil action for damages caused by wildfire.

5 The provisions of this section only apply to a qualified utility with a valid and current
6 wildfire mitigation plan as of the date of the initial ignition of the wildfire for which damages
7 are sought.

8 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 49:**

9 A person who obtains payment for damages resulting from wildfire pursuant to a
10 policy of insurance is deemed to have been made whole exclusively for purposes of an
11 insurer's right to subrogation.