SB 926 A -A4, -A5 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 5/12, 5/13, 5/15, 5/21, 5/21

WHAT THE MEASURE DOES:

This measure prohibits an electric company from recovering from ratepayers the costs and expenses arising from wildfire liability and modifies a wildfire plaintiff's measure of recovery from an electric company.

Detailed Summary

- Defines an "electric company" to mean a company that is not consumer-owned and provides electricity to 25,000 or more Oregon customers with such an electric company.
- Prohibits an electric company from recovering from its customers:
  - Costs associated with fines or penalties based on allegations of negligence or misconduct that resulted in a wildfire;
  - Costs associated with a judgment or settlement of a civil action based on allegations of negligence or misconduct that resulted in a wildfire;
  - Wildfire litigation costs, and
  - Costs to repair or replace infrastructure damaged through the electric company's own fault.
- Prohibits electric companies indebted by a wildfire-related judgment from distributing dividends, income, interest, profits, or other value to those with an ownership interest in the electric company or a related company.
- Directs the court to award a prevailing wildfire plaintiff 9 percent interest from the time of wildfire ignition and damages without offset of recovery from other sources.
- Applies the above provisions to all wildfires ignited after January 1, 2020.
- Requires an electric company with an outstanding wildfire judgment, issued between January 1, 2020, and January 1, 2025, and not satisfied by January 1, 2026, to pay all taxes owed by the prevailing party at the time of the electric company's satisfaction of judgment.

SENATE FLOOR: Ayes, 22; Nays, 6.

FISCAL: Has minimal fiscal impact

REVENUE: Has minimal revenue impact

ISSUES DISCUSSED:

- Labor Day 2020 Wildfire stories of survival and loss
- Ongoing PacifiCorp wildfire litigation
- Potential effect and constitutional concerns of measure language
- Potential for unintended consequences of measure
- Accountability and justice for wildfire victims
- Ensuring utilities' ability to pay wildfire damages
- Oregon law on prejudgment interest, setting of utility rates, taxation of damages, appellate bonds, etc.

EFFECT OF AMENDMENT:

-A4 This amendment replaces the measure and creates a state Wildfire Recovery Fund to expeditiously provide designated wildfire victims with up to $100,000 in financial assistance with the State of Oregon receiving a right of repayment and subrogation in return.

Detailed Summary:

- Defines key terms:
  - "Electric company" as defined by ORS 757.600 and having more than 25,000 Oregon customers; and
  - "Wildfire" defined as a fire started between July 5 and September 30, 2020, and subject to a governmental declaration of emergency or disaster.
- Directs the Oregon Department of Administrative Services to establish a program to provide wildfire victims up to $100,000 in financial assistance with qualified individuals being those with a pending but unpaid insurance claim or liability claim against an electric company.
- Requires wildfire victims as a condition to receiving such assistance to enter a contractual subrogation agreement with the department, granting the State or Oregon priority to amounts recovered on the victim's insurance or liability claims along with an assignment to the state of all associated claims but limiting the state's total recovery to the amount of financial assistance actually provided.
- Requires that a wildfire victim receiving financial assistance make good faith efforts to pursue recovery and provide updates, as requested, to the department.
- Creates the Wildfire Recovery Fund with funds appropriated in an unspecified amount by the Legislative Assembly, funds recovered directly from wildfire victims, or through the state's associated subrogation rights.

-A5 This amendment modifies a wildfire plaintiff's measure of recovery from an electric company and gives the Public Utility Commission (PUC) additional oversight over electric companies' assets and equity. This amendment also requires public utilities to apply for wildfire safety certifications and sets out associated standards and criteria. This amendment also directs the PUC to commission a third-party expert report on catastrophic wildfire risk and recovery. The PUC must then report the expert's findings and recommendations to the Legislative Assembly committees related to energy and environment during the 2026 session along with recommendations for a subsequent stakeholder process to develop legislation for the 2027 session. Finally, this amendment declares an emergency with the measure effective on passage.

<u>Detailed Summary</u>:

WILDFIRE LITIGATION

Sections 1-2: Maintains measure's as-engrossed language
- Maintains the engrossed measure's definition of electric company for Sections 1 to 7, and the language prohibiting an electric company from recovering from ratepayers costs and expenses arising from wildfire legal actions, settlements, and the electric company's fault.

Section 3: Judgment debtor electric company's notice to PUC before distributing assets
- Requires an electric company owing a debt on an outstanding wildfire judgment to provide notice to the PUC 30 days before distributing dividends, income, interest, profits, or other value to those with an ownership interest in the electric company or a related company.
- Allows the PUC, upon receiving this electric company notice, to
  - Order the electric company to suspend the distribution while the PUC investigates the potential impact;
  - Impose restrictions on the distribution;
  - Require the electric company to maintain a PUC-specified minimum common equity percentage; and
  - If the electric company's equity percentage is below the PUC-established minimum, the PUC may prohibit the proposed distribution and require the electric company to submit a plan within 60 days detailing how the company will meet the requisite common equity percentage.
- Requires the PUC, in evaluating the electric company's proposed distribution, to consider the electric company's service obligations to its customers and any outstanding judgments.

Section 4: Wildfire plaintiff's motion for an electric company's security or bond
- Allows a wildfire plaintiff to file a motion to require an electric company defendant to file a security or bond.
- Directs the court to grant the motion if:

  - The civil action is proceeding in separate liability and damages stages;
  - The plaintiff establishes in the liability stage that the electric company acted with negligence or a higher degree of fault; and
  - The electric company has been found liable to other plaintiffs for the same wildfire.
- Directs the court to set the security or bond at an amount sufficient to cover a money award in light of other potential awards resulting from the same wildfire.

Section 5: Wildfire plaintiff's motion for prejudgment interest

- Allows a wildfire plaintiff to file a motion for prejudgment interest to the extent their loss is ascertainable, either from the date of the wildfire or from the date liability is established in a civil action.
- Creates a rebuttable presumption that losses to real property occurred on the date the real property ignited.

Section 6: Wildfire plaintiff's motion for supplemental judgment for increased tax liability

- Allows a wildfire plaintiff to file a motion for supplemental judgment to recover any additional tax liability incurred when the electric company paid the final judgment as compared to the hypothetical tax liability incurred by plaintiff had the electric company rendered such payment when it was found liable.
- Defines "judgment" for purposes of this section as a final judgment with no further right or time to appeal.

Section 7: Effective date

- Renders Sections 2 through 6 applicable to wildfires ignited on or after January 1, 2020.

WILDFIRE SAFETY CERTIFICATION

Section 9: Legislative intent

- Declares and recognizes wildfire danger, electric utilities' role in mitigating risk, existing wildfire protection and mitigation plans, and state agencies' role in setting utilities' standard of care.
- Recognizes the PUC's authority to implement and enforce wildfire safety standards.

Section 10: IOU's safety certificates

- Requires public utilities, also known as IOUs, to apply annually for PUC wildfire safety certificates with documentation satisfying the following criteria:
  - An existing wildfire protection plan under ORS 757.963;
  - Proof of development, adoption, and implementation of a wildfire protection plan over the preceding year, including evidence of mitigation expenditures and physical evidence;
  - Identification of, justification for, and a timeline to effectuate any outstanding elements of an IOU's wildfire protection plan;
  - A demonstrated commitment to wildfire safety, including workshops, internal safety culture assessments, a process to implement the findings of such assessments, trainings, annual performance reviews, and implementation of additional mitigation measures; and
  - Responsiveness to PUC safety rules, additional requirements, and identified deficiencies.
- Authorizes the PUC to adopt additional requirements to verify a public utility's implementation of wildfire safety measures and electrical grid resiliency, and allows an IOU to provide third-party assessments to demonstrate such implementation.
- Requires the PUC to approve or deny an IOU's application for wildfire safety certification within 90 days with the option to demand additional documentation or require refiling.
- Establishes that the issuance of a wildfire safety demonstrates that an IOU has established and implemented wildfire policies and practices consistent with the PUC's wildfire safety standards on the date the certification is issued.
  - The safety certificate does not relieve an IOU from its obligation of reasonable care nor does it establish immunity against wildfire claims or damages.
  - The denial of a safety certificate does not establish liability for wildfire claims or damages.

- Directs the PUC to consult with the State Forestry Department, State Fire Marshall, and academic institutions to adopt rules to implement and audit safety certifications.

Section 11: Effective date
- Requires IOUs to file their first application for a safety certificate by the end of 2027.

STUDY ON CATASTROPHIC WILDFIRE RISK AND RECOVERY

Section 12: Expert study, PUC report, and stakeholder involvement
- Directs the PUC to commission a third-party expert's study of catastrophic wildfire risk and recovery with the study funded by fees collected from the IOUs.
- Mandates that the study comprehensively examine the negative consequences of catastrophic wildfires, including:
  - Risks of electric service disruptions, including those arising from mitigation efforts;
  - IOU's liability, ability to raise capital, and procure insurance as well as downstream socioeconomic consequences, renewable energy development, and the state's pursuit of existing clean energy targets; and
  - The pace of wildfire recovery funding.
- Mandates that the study evaluate a range of policy options, balancing the needs of wildfire victims and utility customers, with such policies addressing:
  - A process to ensure expeditious compensation to victims;
  - An approach that fosters capital investment in green energy, reliable electricity, and associated economic growth; and
  - The investigative process to determine the cause of a given wildfire.
- Mandates that the study outline the steps and estimate the costs to implement the identified policy options.
- Directs the PUC to report the expert study's findings and recommendations to the Legislative Assembly committees relating to energy and environment during the 2026 session.
- Directs the PUC to provide recommendations for a stakeholder process to develop legislation for the 2027 session.

Section 15: Effective date of entire measure
- Declares an emergency, effective on passage.

BACKGROUND:

Pursuant to ORS Chapter 756, the Public Utility Commission has broad regulatory power over public utilities (IOUs). *See* ORS 756.040. IOUs in Oregon must apply with the Public Utilities Commission (PUC) before raising consumer prices or rates. When deciding whether to approve a requested rate adjustment, the PUC must ensure the change is fair and reasonable for utility customers while also allowing the utility service provider to recover reasonable costs and earn a reasonable return on its investments. The PUC uses a quasi-judicial investigation to examine a utility's operating expenses, investments, and capital costs and thereby determine the extent to which these costs can be passed along to consumers through increased rates.

In 2021, the Legislative Assembly enacted Senate Bill 762, a wide-ranging wildfire law that invested in dozens of programs and initiatives with a focus on creating fire-adapted communities, developing safe and effective wildfire responses, and increasing the resiliency of Oregon's landscapes and electrical grid. SB 762 required IOUs to submit annual wildfire protection plans to the PUC for review pursuant to ORS 757.963. IOUs' wildfire protection plans must, among other requirements, identify high risk areas along with associated mitigation actions and investments, protocols for deenergizing power lines, vegetation management, and public awareness efforts. In 2023, the Legislative Assembly enacted Senate Bill 80, which adapted and refined various provisions of SB 762.