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PacifiCorp has been involved with bills across western states in recent years that woud offer some protection against lawsuits for powerline-ignited wildfires if companies get mitigation plans approved by the state. (Photo by Robert Zullo/States Newsroom)

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The Oregon Legislature is expected to advance two bills this week that could provide electric utilities with a financial safety net and some level of protection from bankruptcy-inducing lawsuits if their equipment starts a catastrophic fire.

The bills bear striking resemblance to others being considered and passed by legislators in three other states, as well as controversial laws passed in Utah in 2020. PacifiCorp, owner of Pacific Power in Oregon, contributed to all of the bills and the Utah law.

Each of those bills confers upon utilities some version of state-sanctioned approval for "acting reasonably" to prevent wildfires, if they get wildfire mitigation plans approved annually or every few years by the state. Cooperative and private investor-owned utilities such as PacifiCorp say they need this to ensure that they are making smart investments in wildfire prevention and grid reliability, and to ensure they don't go bankrupt.

That's the argument being used by Oregon's bill sponsors, too. But trial lawyers across the West, who represent victims of utility-caused wildfires, say the bills are meant to shift the costs of utility-caused wildfire damages from companies to customers.

Oregon's House Bill 3666 would grant utilities a state "wildfire safety certificate" for having annual wildfire mitigation plans approved by the Oregon Public Utility Commission, while House Bill 3917 would set up a catastrophic wildfire fund that utilities pay into.

Victims of utility-caused fires could collect from the fund 80% of "allowable damages," as long as they agree not to sue the utility that caused the fire. The utilities would be allowed to raise customer rates to pay for the fund.

Reps. Pam Marsh, D-Ashland and Kevin Mannix, R-Salem, are sponsoring both bills, which could be voted out of the House Judiciary Committee as early as Tuesday.

Marsh contends Oregon's bills do not in any way infringe on wildfire victims' ability to sue utilities for maximum damages for causing wildfires. She said in an email that legislative attorneys assured her House Bill 3666, offering utilities state certificates for having approved wildfire plans, would not provide immunity or limit liability to utilities.

Trial lawyers do not agree.

"This sort of regulatory compliance defense is a standard thing that corporations across the country are always asking for. This is what they would love," said Daniel Hinkle, a lawyer and senior state affairs counsel for the American Association for Justice. "They would love to check a box and get it rubber-stamped by an agency without opposing counsel, without anybody there to sort of push back on it, and then be able to use that prior certification as a complete, total defense against any claims for accountability later on."

The Washington, D.C.-based association made up of trial lawyers has been tracking bills across the country that were introduced this year to limit utility-caused wildfire liabilities, including in Oregon.

"The overall goal, as I see it across a lot of these bills, is to shift the cost of this (utility-caused wildfires) onto ratepayers," Hinkle said.

Insurers, as well as timber, farm and ranchland owners have come out against the bills in Idaho and Wyoming and expressed concerns about Oregon's bills.

Kenton Brine, president of the NW Insurance Council, said in an email Oregon's bills would likely impact policy holders and insurance companies. The group has not taken a formal stance on them yet.

"The impact for property owners of bills that limit or grant immunity from liability is significant," he said in an email.

He said he shares concerns with the trial lawyers over Oregon's approach, and that legislation as proposed is "likely to impose a new burden of proof on a property owner seeking recovery after a utility-ignited wildfire."

PacifiCorp involvement

In Oregon, PacifiCorp lobbyist Annette Price and lawyer Jennifer Hudson participated in Marsh's work group on the bills, along with representatives of Oregon's cooperative and public utilities and lobbyists for the two other electricity monopolies operating in the state, Portland General Electric and Idaho Power.

Combined, the three monopoly utilities control 75% of Oregon's electricity market.

Omar Granados, a PacifiCorp spokesperson, said in an email that the company's work on bills such as Marsh's are business as usual.

"Consistent with our long-standing practice to provide information to lawmakers who are considering energy policy legislation that could impact the utility and our customers, we provide comments, answer questions and participate on a number of proposed energy policy bills in the states we serve, which include Oregon, Washington, Utah, Idaho and Wyoming," he wrote.

Marsh has said in public hearings that she started working on House Bill 3666 and House Bill 3917 after hearing from constituents about lackluster wildfire prevention work being done by Pacific Power, her area's monopoly utility, and to ensure utilities operating in the state don't go bankrupt. She said House Bill 3666 "will hold utilities to a high

standard of performance through implementation of a safety certification."

Marsh said House Bill 3917, establishing the catastrophic wildfire fund, is needed so wildfire victims have options.

"Without the fund, individuals have these paths: 1) Those with insurance can use their coverage. 2) Those without insurance will, most likely, struggle to cover basic needs with savings, government assistance, or friends and family. 3) All affected individuals can choose to take the utility to court," she wrote in an email.

About 2,300 homes burned up in her southern Oregon district during the 2020 Labor Day Fires. Because no cause of the fires in that area were identified, her constituents weren't able to collect any damages from an at-fault party and those without insurance have been left with nothing.

She added that she sees the bill as a starting point.

"If people agree that a fund of some kind could be useful, we will need to discuss questions around structure and operations, including coverage, administration, the mix of fund contributions, and so forth."

Cody Berne, a governor at large for the Oregon Trial Lawyers Association and an attorney at Portland-based law firm Stoll Berne, said Oregon's catastrophic wildfire fund as proposed would likely encourage low-income fire survivors and those without insurance to forgo collecting maximum damages in a lawsuit against a utility in a powerline-ignited fire and instead settle for less from the fund — a fund seeded with victims' own money, collected through rate increases by utilities.

"This bill would charge customers to create a fund and also make them pay the next time Berkshire Hathaway burns down an Oregon town," Berne said.

Berne is representing survivors of the historic 2020 Labor Day fires that killed 11 and destroyed more than 4,000 homes. Some of those fires were found to have been started by PacifiCorp equipment. PacifiCorp is owned by the multinational conglomerate Berkshire Hathaway.

A jury in 2023 found the company guilty for negligence and recklessness. A recent report from the Oregon Department of Forestry concluded that PacifiCorp did not start fires it was previously found to have started in the Santiam Canyon, refuting statements from first responders from the U.S. Forest Service and trial testimony.

PacifiCorp executives estimate the 2020 Labor Day Fires and 2022 wildfires caused by the company's equipment in Oregon cost them nearly $2.7 billion. Berkshire Hathaway estimates it could face up to $8 billion in claims related to lawsuits over California and Oregon wildfires since 2020. That's a bit more than half of Berkshire's 2024 revenue — a record $14.5 billion.

"Most people — including fire victims — have to live with the justice system as it is. But when the justice system holds billionaires and their trillion-dollar corporations accountable, they think they can change the rules," Berne said.

Starting with Utah

PacifiCorp had its first success in contributing to legislation that limited its liability and the damages wildfire victims can collect in a powerline-ignited fire in 2020.

PacifiCorp lobbyists provided comments and answered questions for lawmakers working on Utah's House Bill 66, according to spokesperson Granados. Granados did not answer questions about whether the lobbyists or company lawyers participated in bill workgroups or helped with the bills in the drafting stage.

"This was an effort by a broad coalition," he said.

The Utah law offers electric utilities statutory protection from negligence charges in powerline-ignited wildfires if the utilities have an approved wildfire mitigation plan. It also limits damages that survivors of wildfire can collect in suits against utilities as the lesser of either the cost to rebuild, or the difference of the fair market value of the home before the fire and the fair market value of the property after the fire. That means if it costs $300,000 to rebuild a burned home, but the fair market value of the home before the fire was $100,000 and the fair market value of the scorched property after the fire is $20,000 a victim only gets to claim $80,000 in damages.

In the years since Utah's law passed, PacifiCorp attempted to pass liability limits via states' utility commissions. In Idaho in 2024 the company asked the state's commission to include language that would have made its electric utility Rocky Mountain Power liable only for "actual economic damages" in a powerline-ignited fire, excluding noneconomic, punitive and incidental damages.

It made nearly identical requests to commissions in Washington, Oregon, California and Wyoming, according to reporting from Boise State Public Radio.

Idaho's commission declined to approve the changes, so the company went to the Idaho Legislature. Other state legislatures followed.

Reasonable and prudent

Oregon's bills share similarities to that original 2020 Utah law. House Bill 3197, establishing a catastrophic wildfire fund, also limits recoverable damages from the fund to the lesser of either the cost of repairs or the difference in the fair market value of the property immediately before and immediately after a catastrophic wildfire.

"The goal has been in a lot of these bills to restrict the recovery to the loss of fair market value, which is always going to be less than the cost of repair," said Geoffrey Louden, a lawyer with the American Association for Justice.

All of the bills requiring approval or certification for wildfire mitigation plans that PacifiCorp has weighed in on in the West include language that describe the utilities as having acted "reasonably" and "prudently" to prevent fire in securing state approval.

Trial lawyers take the greatest issue with those words, as they are often used to establish a statutory presumption that an entity has not acted in a negligent, grossly negligent or reckless manner in cases of civil wrongdoing.

Hinkle, of the American Association for Justice, said getting laws passed with language like this is "standard corporate behavior 101."

Marsh recently amended House Bill 3666 to remove language that previously said a wildfire safety certificate from the state "establishes that an applicant is acting reasonably with regard to wildfire safety practices," to instead say a certificate indicates the utility was "consistent with the commission's wildfire safety standards," and cut off a provision making the certificate valid for 12 months. She said she worked with trial lawyers on the amendment.

But Berne of the Oregon Trial Lawyers Association and large landowners say this is not enough.

“If the goal is safety, this bill won’t accomplish it,” Berne said in an email. “It recycles fire safety rules that are already in place. There are no resources to investigate and make sure that investor-owned power companies are following the rules. The bill just gives the appearance of safety.”

Betsy Earls, a lobbyist for timber giant Weyerhaeuser, said issuing safety certifications to the utilities could have unintended consequences for companies like Weyerhaeuser even with Marsh’s amendment.

“It will amount to perhaps a thumb on the scale when juries are deciding and people are thinking about what’s being introduced and proven in court,” she told lawmakers at a March 18 public hearing for House Bill 3666.

The company’s 1.5 million acres in Oregon are prohibitively expensive to insure, she said, and though it deals every year with all kinds of fires and losses, sometimes the fires are caused by utility equipment, and the only recompense the company has for its losses is to sue the utility.

“We have no other way to recoup losses that are due to others’ negligence unless we go to court,” Earls said.

How are California’s utility and wildfire damage bills different?

In 2019, California passed laws creating a wildfire safety certification program for utilities as well as a catastrophic wildfire fund. But the policies in California are far different than those being proposed in Oregon and other states in the West, according to Berne of the Oregon Trial Lawyers Association. Wildfire safety certificates in California cannot by law be used to limit utilities’ liability in lawsuits because monopoly utilities in California are considered “strictly liable” for any fires they start. Having an approved plan and certificate from the California Public Utility Commission means the utility is allowed to raise rates to pay for wildfire prevention work and to participate in California’s catastrophic wildfire fund. The fund is available for qualifying utilities to recoup costs after they’ve paid fire victims damages. The fund does not send money directly to victims, who are never forced to give up their lawsuits, and who face no artificial caps on what they can collect in damages from utilities. PacifiCorp did not contribute to California’s legislation, according to Omar Granados, a company spokesperson.

Alex Baumhardt

Alex Baumhardt covers education and the environment for the Oregon Capital Chronicle. Before coming to Oregon, she was a national radio producer and reporter covering education for American Public Media's documentaries and investigations unit, APM Reports. She earned a master's degree in digital and visual media as a U.S. Fulbright scholar in Spain, and has reported from the Arctic to the Antarctic for national and international media and from Minnesota and Oregon for The Washington Post.

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