

1 SENATE BILL 161

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

4 Pat Woods and Meredith A. Dixon

10 AN ACT

11 RELATING TO ELECTRIC UTILITIES; ENACTING THE WILDFIRE UTILITY  
12 MITIGATION AND LIABILITY ACT; PROVIDING FOR WILDFIRE MITIGATION  
13 PLANS, APPROVALS AND ANNUAL COMPLIANCE REPORTS; ALLOWING FOR  
14 COST RECOVERY; ESTABLISHING LIMITATIONS ON LIABILITY; PROVIDING  
15 ACCESS TO GRANTS FOR COOPERATIVES TO IMPLEMENT MITIGATION  
16 PLANS; CREATING A STATUTE OF LIMITATION; AMENDING SECTION  
17 30-32-4 NMSA 1978 (BEING LAWS 1882, CHAPTER 61, SECTION 7, AS  
18 AMENDED) AND SECTION 37-1-4 NMSA 1978 (BEING LAWS 1880,  
19 CHAPTER, 5, SECTION 4, AS AMENDED) TO CREATE EXCEPTIONS FOR  
20 DAMAGES AWARDED FOR STARTING A FIRE AND ACTIONS FOR PERSONAL  
21 INJURY; MAKING APPROPRIATIONS.

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. A new section of Chapter 62 NMSA 1978 is  
25 enacted to read:

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1           "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 12 of  
2 this act may be cited as the "Wildfire Utility Mitigation and  
3 Liability Act"."

4           SECTION 2. A new section of Chapter 62 NMSA 1978 is  
5 enacted to read:

6           "[NEW MATERIAL] DEFINITIONS.--As used in the Wildfire  
7 Utility Mitigation and Liability Act:

8           A. "commercially sensitive information" means  
9 nonpublic business data that, if disclosed, could give  
10 competitors an advantage or cause significant financial harm,  
11 and includes pricing, customer lists, financial models and  
12 strategic plans;

13           B. "commission" means the public regulation  
14 commission;

15           C. "confidential information" includes:

16           (1) information that identifies an electric  
17 utility's customers personally;

18           (2) trade secrets, as defined by law, or  
19 commercially sensitive information; and

20           (3) sensitive information regarding facilities  
21 or operations of the electric utility, the protection of which  
22 is necessary for public safety or the security of the electric  
23 utility;

24           D. "division" means the forestry division of the  
25 energy, minerals and natural resources department;

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E. "electric utility" means:

(1) an electric public utility regulated by the commission pursuant to the Public Utility Act; or

(2) a utility owned or operated by a municipally owned corporation that is exempt from commission regulation pursuant to Section 62-6-4 NMSA 1978;

F. "mitigation plan" means a wildfire mitigation plan that is submitted to the commission for review and approval;

G. "national wildfire coordinating group" means the interagency working group originally formed by the United States department of agriculture and the United States department of the interior in 1976 to establish a formalized system of standards of training, equipment, aircraft, suppression priorities and other operational issues affecting fire management, which currently includes various state and tribal land management and other entities concerned with fire management;

H. "public safety power shutoff" means a temporary cut in power by an electric utility to an area experiencing extreme wildfire risk to prevent the utility's equipment from causing a fire;

I. "public safety power shutoff plan" means a plan developed by an electric utility to implement a public safety power shutoff, including how a power shutoff decision is made

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1 and who is authorized to make the decision;

2                   J. "qualified wildfire civil action" means a civil  
3 action against an electric utility:

4                   (1) in which a plaintiff seeks damages  
5 resulting from a wildfire that originated from the operations,  
6 facilities or equipment of the electric utility; and

7                   (2) that has received a certificate of  
8 compliance from the commission;

9                   K. "rider" means a separate charge or credit on an  
10 electricity service bill used to recover specific costs or  
11 provide specific adjustments not covered in the standard base  
12 rates for electricity service; and

13                   L. "wildfire" means:

14                   (1) a fire that orginated from an unplanned  
15 ignition, such as lightning, geothermal activity or an  
16 unauthorized or accidental human-caused fire; or

17                   (2) a prescribed fire that is declared a  
18 wildfire by the federal, state or tribal agency with  
19 jurisdiction over the land where the fire originated."

20                   SECTION 3. A new section of Chapter 62 NMSA 1978 is  
21 enacted to read:

22                   "[NEW MATERIAL] MITIGATION PLAN--APPROVAL--DURATION--  
23 EFFECT.--

24                   A. An electric utility may submit a mitigation plan  
25 to the commission for review and approval. If the electric

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1       utility demonstrates substantial compliance with the approved  
2       mitigation plan within one year, pursuant to Section 5 of the  
3       Wildfire Utility Mitigation and Liability Act, the commission  
4       shall issue the utility a certificate of compliance. A  
5       certificate of compliance shall serve as proof of an electric  
6       utility's reasonable and prudent preparation for, and  
7       mitigation of, wildfire risk in a qualified wildfire civil  
8       action.

9                   B. Beginning August 1, 2026, an electric utility  
10          may submit a mitigation plan to the commission for review and  
11          approval.

12                  C. The commission shall approve or reject a  
13          mitigation plan in writing within one hundred eighty days of  
14          submission of the plan. If the commission does not approve or  
15          reject a mitigation plan within one hundred eighty days, the  
16          plan shall be deemed approved.

17                  D. An electric utility that has an approved  
18          mitigation plan shall submit an updated mitigation plan upon  
19          the commission's request. The commission may request an  
20          updated mitigation plan from an electric utility no more than  
21          once every five years from the date a mitigation plan is  
22          approved.

23                  E. The commission may promulgate rules to govern  
24          the process for submission, review and approval of mitigation  
25          plans.

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1                   F. Neither the commission nor the state shall be  
2 liable for monetary damages in a claim based upon the  
3 commission's approval or denial of a mitigation plan."

4                   SECTION 4. A new section of Chapter 62 NMSA 1978 is  
5 enacted to read:

6                   "[NEW MATERIAL] MITIGATION PLANS--REQUIREMENTS.--A  
7 mitigation plan shall include the following:

8                   A. the electric utility's service territory and a  
9 description of the methods by which the electric utility will  
10 assess wildfire risk within the electric utility's service  
11 territory;

12                   B. the electric utility's situational awareness  
13 program, including weather monitoring;

14                   C. the procedures, standards and schedules that the  
15 electric utility will use to inspect, maintain and operate its  
16 transmission and distribution infrastructure;

17                   D. the procedures and standards that the electric  
18 utility will use to perform vegetation management;

19                   E. the proposed mitigation measures, modifications,  
20 replacements and upgrades to facilities and preventive programs  
21 that the electric utility will implement to reduce the risk of  
22 its electric facilities causing a wildfire, including pole and  
23 right-of-way inspections;

24                   F. how the electric utility will coordinate with  
25 other electric utilities regarding any shared facilities;

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1                   G. if the electric utility has a public safety  
2 power shutoff plan, a description of how the electric utility  
3 will implement the plan; how the electric utility will  
4 communicate with the public, other utilities and emergency  
5 responders regarding power shutoffs; and the electric utility's  
6 procedures for restoring power upon the conclusion of a public  
7 safety power shutoff;

8                   H. the procedures that the electric utility will  
9 use to restore its electrical system in the event of a  
10 wildfire;

11                  I. the community outreach and public awareness  
12 efforts that the electric utility will use when implementing a  
13 public safety power shutoff;

14                  J. the electric utility's emergency response  
15 procedures in the event of a wildfire, including procedures for  
16 coordination with emergency managers before and during an  
17 active wildfire; and

18                  K. procedures for coordination with first  
19 responders and government agencies and officials, including  
20 forest managers, wildland firefighters and local fire  
21 departments, during a wildfire."

22                  SECTION 5. A new section of Chapter 62 NMSA 1978 is  
23 enacted to read:

24                  "[NEW MATERIAL] COMPLIANCE REPORTS--CERTIFICATE OF  
25 COMPLIANCE--NOTICE OF NONCOMPLIANCE--RECOVERY ACTION.--

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A. On or before June 1 of the calendar year following the approval of a mitigation plan, and on or before June 1 of each year thereafter, an electric utility shall submit a compliance report to the commission detailing the electric utility's compliance with its approved mitigation plan, including any modifications and updates made to the mitigation plan.

B. No later than one hundred eighty days after the submission of a compliance report, the commission, in consultation with the division, shall determine whether the electric utility substantially complied with the electric utility's mitigation plan during the preceding year, and:

(1) if the commission determines that the electric utility is in substantial compliance, the commission shall issue a certificate of compliance to the electric utility; or

(2) if the commission determines that the electric utility is not in substantial compliance with its mitigation plan, the commission shall issue a notice of noncompliance to the electric utility that identifies the specific areas of noncompliance.

C. Upon receiving a notice of noncompliance, an electric utility may undertake corrective action to come into compliance with its mitigation plan and, upon completing the corrective action, submit a report to the commission detailing

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1 the corrective action.

2 D. Within sixty days of receiving a report of a  
3 corrective action from an electric utility, the commission  
4 shall determine whether the electric utility is in substantial  
5 compliance following the corrective action.

6 E. If, after reviewing a corrective action report,  
7 the commission finds that an electric utility remains out of  
8 substantial compliance with the utility's mitigation plan, the  
9 commission shall notify the electric utility of that finding  
10 and the electric utility may either undertake further  
11 corrective action or seek judicial review pursuant to Section  
12 39-3-1.1 NMSA 1978.

13 F. If the commission fails to make a determination  
14 within a time period prescribed by this section, the electric  
15 utility shall be deemed to be in substantial compliance with  
16 its mitigation plan.

17 G. The commission shall revoke a certificate of  
18 compliance when an electric utility fails to:

19 (1) take corrective action to come into  
20 compliance with a mitigation plan; or

21 (2) update a mitigation plan as requested by  
22 the commission.

23 H. Neither the commission nor the state shall be  
24 liable for monetary damages in a claim based upon the  
25 commission's issuance or denial of a certificate of

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1 compliance."

2 SECTION 6. A new section of Chapter 62 NMSA 1978 is  
3 enacted to read:

4 "[NEW MATERIAL] POSTING OF MITIGATION PLANS--  
5 CONFIDENTIALITY.--

6 A. The commission shall post on the commission's  
7 website and make publicly available an electric utility's  
8 current mitigation plan, compliance report and, as applicable,  
9 certificate of compliance or notice of noncompliance; provided  
10 that the commission shall not post or make publicly available  
11 any information designated as confidential in accordance with  
12 this section.

13 B. If an electric utility includes confidential  
14 information with its mitigation plan or compliance report, the  
15 confidential information shall be marked "CONFIDENTIAL – NOT  
16 FOR PUBLIC RELEASE", and the confidential information shall be  
17 attached as a separable appendix to the mitigation plan or  
18 annual report."

19 SECTION 7. A new section of Chapter 62 NMSA 1978 is  
20 enacted to read:

21 "[NEW MATERIAL] MITIGATION PLAN IMPLEMENTATION--PROPERTY  
22 ACCESS.--

23 A. If an electric utility requires access to  
24 private, state or local government-owned property to implement  
25 an approved mitigation plan, the electric utility shall submit  
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1 a written request to access the property to the property owner  
2 through post-prepaid mail or electronic message to an email  
3 address known to belong to the property owner. If the property  
4 owner does not grant or deny access within thirty days of  
5 submission of the request, the property owner shall be deemed  
6 to have agreed to the request to access the property for the  
7 limited purpose of performing work necessary to the approved  
8 mitigation plan.

9                   B. Upon request by an electric utility, a local law  
10 enforcement agency may provide personnel, equipment, traffic  
11 control, public safety support or other reasonable assistance  
12 necessary to carry out wildfire mitigation activities.

13                   C. An electric utility shall not be held liable in  
14 a civil action for damage to a property resulting from an  
15 action to implement a mitigation plan unless the electric  
16 utility intentionally or maliciously causes damage to a  
17 property."

18                   SECTION 8. A new section of Chapter 62 NMSA 1978 is  
19 enacted to read:

20                   "[NEW MATERIAL] COST RECOVERY.--

21                   A. As used in this section, "true-up" means to  
22 conduct an accounting reconciliation of the accruals and  
23 expenses for a business, project or program that replaces prior  
24 estimated figures with actual figures when the actual figures  
25 become available.

B. If the commission approves a mitigation plan for an electric public utility regulated by the commission pursuant to the Public Utility Act, the commission shall concurrently approve a permanent mitigation plan cost recovery rider to allow the electric utility to recover reasonably incurred investments and expenditures, including the costs of capital, made to implement the mitigation plan; provided that the mitigation plan cost recovery rider is subject to change based on a subsequent truing-up of the costs of capital investments and expenses. The commission shall annually true-up a mitigation plan cost recovery rider upon submission of the electric utility's compliance reports pursuant to Section 5 of the Wildfire Utility Mitigation and Liability Act.

C. The commission may expressly disallow specific costs from being eligible for recovery by an electric utility through a written order.

D. Costs incurred by an electric utility resulting from compliance with an approved mitigation plan are deemed reasonable and recoverable unless expressly disallowed by the commission pursuant to Subsection C of this section."

**SECTION 9.** A new section of Chapter 62 NMSA 1978 is enacted to read:

"NEW MATERIAL] QUALIFIED WILDFIRE CIVIL ACTIONS--  
LIMITATIONS ON LIABILITY AND DAMAGES.--

A. In a qualified wildfire civil action, there

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1 shall be a rebuttable presumption that a certificate of  
2 compliance is proof of reasonable and prudent preparation for,  
3 and mitigation of, wildfire risk. A plaintiff may rebut this  
4 presumption only upon proof by clear and convincing evidence  
5 through an origin and cause investigation conducted by a  
6 federal, state or tribal agency pursuant to the national  
7 wildfire coordinating group wildfire investigation standards  
8 that:

9 (1) the electric utility's operations,  
10 facilities or equipment caused the fire;

11 (2) the electric utility failed to  
12 substantially comply with its mitigation plan;

13 (3) the electric utility's failure to comply  
14 with its mitigation plan was the actual and proximate cause of  
15 the plaintiff's claimed damages;

16 (4) the electric utility was not prevented  
17 from complying with its plan by a federal agency, property  
18 owner, customer or member of the electric utility or local,  
19 state or tribal government; and

20 (5) the electric utility intentionally or  
21 maliciously disregarded the risk of wildfire posed by its  
22 operations, facilities or equipment.

23 B. In a qualified wildfire civil action, a monetary  
24 award for damages may only be awarded as follows:

25 (1) for an economic loss, the award shall be

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1 the lesser of:

2 (a) the cost to restore damaged property

3 to the property's condition before the wildfire; or

4 (b) the difference between the fair

5 market value of the property before the wildfire and the fair

6 market value of the property after the wildfire without

7 restoration; and

8 (2) for a noneconomic loss, a monetary damage

9 award shall not be greater than five hundred thousand dollars

10 (\$500,000) per plaintiff and may only be awarded for a physical

11 injury that, as established by the competent testimony of a

12 health care provider:

13 (a) creates a high probability of death,

14 causes serious disfigurement or results in permanent or

15 protracted loss or impairment of the function of any body part

16 or organ; or

17 (b) resulted in death.

18 C. When an origin and cause investigation conducted

19 pursuant to the national wildfire coordinating group wildfire

20 investigation standards determines that a wildfire was caused

21 by vegetation from outside an electric utility's easement,

22 property or right of way, the electric utility is not liable in

23 a civil action for damages resulting from the fire, unless:

24 (1) the owner of the property on which the

25 vegetation originated provided the electric utility with a

1 written demand to remove the vegetation prior to the wildfire's  
2 ignition and the electric utility unreasonably refused to  
3 comply with the written demand; or

4 (2) a plaintiff proves, by clear and  
5 convincing evidence, that:

6 (a) the electric utility's equipment,  
7 facilities or operations substantially contributed to the fire;

8 (b) the electric utility failed to  
9 substantially comply with its mitigation plan with respect to  
10 maintenance of the easement, property or right of way;

11 (c) the electric utility's failure to  
12 comply with its mitigation plan was an actual and proximate  
13 cause of the plaintiff's claimed damages;

14 (d) the electric utility was not denied  
15 the ability to comply with its mitigation plan by a federal  
16 agency, property owner, customer or member of the electric  
17 utility or local, state or tribal government; and

18 (e) the electric utility intentionally  
19 or maliciously disregarded the risk of wildfire posed by its  
20 operations, facilities or equipment.

21 D. In a qualified wildfire civil action against an  
22 electric utility owned or operated by the state or a political  
23 subdivision of the state, the procedural provisions and the  
24 damages limitations of the Tort Claims Act shall apply.

25 E. Attorney fees and exemplary or punitive damages

1 shall not be awarded in a qualified wildfire civil action.

2                   F. In a qualified wildfire civil action, an  
3 electric utility shall not be liable for implementing or not  
4 implementing a public safety power shutoff when the electric  
5 utility acts in conformity with an approved mitigation plan.

6                   G. The provisions of this section shall not limit  
7 the defenses that an electric utility may be entitled to raise  
8 in a qualified wildfire civil action."

9                   SECTION 10. A new section of Chapter 62 NMSA 1978 is  
10 enacted to read:

11                   "[NEW MATERIAL] STATUTE OF LIMITATION.--A qualified  
12 wildfire civil action shall be brought within one calendar year  
13 after the ignition of the wildfire."

14                   SECTION 11. A new section of Chapter 62 NMSA 1978 is  
15 enacted to read:

16                   "[NEW MATERIAL] WILDFIRE MITIGATION GRANTS--ELIGIBILITY.--

17                   A. As used in this section, "cooperative" means a  
18 cooperative nonprofit membership corporation organized pursuant  
19 to the Rural Electric Cooperative Act.

20                   B. The division may provide grants to cooperatives  
21 to assist in the implementation of mitigation plans.

22                   C. To be eligible for a grant, a cooperative shall  
23 have a mitigation plan that has been approved by the  
24 commission. A cooperative shall not receive more than one  
25 grant per year, and a single grant shall not be greater than

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1 one million dollars (\$1,000,000).

2                   D. The division shall promulgate rules to establish  
3 the criteria, process and application requirements for grants;  
4 provided that:

5                   (1) grants shall be prioritized to achieve the  
6 greatest anticipated mitigation of wildfire risk;

7                   (2) prior to approving a grant, the division  
8 shall make a written determination that the incidental benefit  
9 to the cooperative is outweighed by the benefits to the state  
10 resulting from the reduction in fire in wildfires within the  
11 state; and

12                  (3) grant applicants shall be required to use  
13 the grant money solely for actions to implement an approved  
14 mitigation plan."

15                  SECTION 12. A new section of Chapter 62 NMSA 1978 is  
16 enacted to read:

17                  "[NEW MATERIAL] RULEMAKING.--The commission may promulgate  
18 rules necessary to implement the Wildfire Utility Mitigation  
19 and Liability Act."

20                  SECTION 13. Section 30-32-4 NMSA 1978 (being Laws 1882,  
21 Chapter 61, Section 7, as amended) is amended to read:

22                  "30-32-4. DAMAGES TO PERSON INJURED.--Except for an  
23 electric utility operating pursuant to a wildfire mitigation  
24 plan approved by the public regulation commission pursuant to  
25 the Wildfire Utility Mitigation and Liability Act, if a person

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sets on fire any woods, marshes or prairies, whether the property is the person's own or not, [so as thereby to  
oecasion] and causes damage to another person or that other  
person's property, the [person shall make satisfaction in  
double damages to the party injured to be recovered by civil  
action] responsible party shall pay the injured party twice the  
amount of damages, recoverable through a civil action, unless  
the person is conducting a prescribed burn pursuant to the  
Prescribed Burning Act."

SECTION 14. Section 37-1-4 NMSA 1978 (being Laws 1880,  
Chapter 5, Section 4, as amended) is amended to read:

"37-1-4. ACCOUNTS--UNWRITTEN CONTRACTS--TORTS--FRAUDS--  
GENERAL PROVISION.--[SEC. 4. Those] Excepting qualified  
wildfire civil actions brought against an electric utility for  
damages resulting from wildfire pursuant to the Wildfire  
Utility Mitigation and Liability Act, actions founded upon  
accounts and unwritten contracts, [those] actions brought for  
injuries to property or for the conversion of personal property  
or for relief upon the ground of fraud and all other actions  
not [herein] otherwise provided for in Chapter 37, Article 1  
NMSA 1978 and specified shall be brought within four years."

SECTION 15. APPROPRIATION.--One million five hundred  
thousand dollars (\$1,500,000) is appropriated from the general  
fund to the public regulation commission for expenditure in  
fiscal year 2027 to purchase equipment and contract for

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1 services to carry out the public regulation commission's duties  
2 pursuant to the Wildfire Utility Mitigation and Liability Act.  
3 Any unexpended balance remaining at the end of fiscal year 2027  
4 shall revert to the general fund.

5 **SECTION 16. APPROPRIATION.**--Ten million dollars  
6 (\$10,000,000) is appropriated from the general fund to the  
7 forestry division of the energy, minerals and natural resources  
8 department for expenditure in fiscal years 2027 and 2028 to  
9 provide grants to cooperative nonprofit membership corporations  
10 organized pursuant to the Rural Electric Cooperative Act  
11 pursuant to Section 11 of the Wildfire Utility Mitigation and  
12 Liability Act. Any unexpended balance remaining at the end of  
13 fiscal year 2028 shall revert to the general fund.

14 **SECTION 17. APPROPRIATION.**--Seven hundred fifty thousand  
15 dollars (\$750,000) is appropriated from the general fund to the  
16 forestry division of the energy, minerals and natural resources  
17 department for expenditure in fiscal year 2027 to purchase  
18 equipment and contract for services to carry out the division's  
19 duties pursuant to the Wildfire Utility Mitigation and  
20 Liability Act. Any unexpended balance remaining at the end of  
21 fiscal year 2027 shall revert to the general fund.

22 **SECTION 18. EFFECTIVE DATE.**--

23 A. The effective date of the provisions of Section  
24 9 of this act is January 1, 2027.

25 B. The effective date of the provisions of Sections  
26 .232934.2

1 through 8 and 10 through 17 of this act is July 1, 2026.

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