SENATE BILL

58TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2027

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

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

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

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

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

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

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

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

B. "commission" means the public regulation commission;

C. "confidential information" includes:

(1) information that identifies a customer of an electric utility;

(2) trade secrets, as defined in Subsection D of Section 57-3A-2 NMSA 1978, or commercially sensitive information; and

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

D. "department" means the energy, minerals and

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natural resources department;

E. "economic loss" means damages other than physical harm to a person;

F. "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;

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

H. "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;

I. "public safety power shutoff" means the proactive de-energization of all or a portion of an electric utility's service area based on elevated wildfire risk conditions, including weather, fuel conditions or system

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conditions, as determined by the electric utility exercising reasonable operational judgment;

J. "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 and who is authorized to make the decision;

K. "qualified wildfire civil action" means a civil action against an electric utility:

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

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

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

M. "wildfire" means:

(1) a fire that originated from an unplanned ignition, such as lightning, geothermal activity or an unauthorized or accidental human-caused fire, including from electrical lines or other utility infrastructure; or

(2) a fire that has received an emergency declaration from a federal, state or tribal agency with jurisdiction over the land where the fire originated."

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

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

A. An electric utility may submit a mitigation plan to the commission for review and approval. If the electric utility demonstrates compliance with the approved mitigation plan, as determined by the commission, within one year, pursuant to Section 5 of the Wildfire Utility Mitigation and Liability Act, the commission shall issue the utility a certificate of compliance. A certificate of compliance shall serve as proof of an electric utility's reasonable and prudent preparation for, and mitigation of, wildfire risk in a qualified wildfire civil action.

B. Beginning August 1, 2027, an electric utility may submit a mitigation plan to the commission for review and approval.

C. The commission shall approve, request modifications or reject a mitigation plan in writing within one hundred eighty days of submission of the plan, or within up to two hundred seventy days of submission of the plan upon a finding by the commission of good cause for the extension. If the commission does not approve or reject a mitigation plan within a time period permitted by this subsection, the plan shall be deemed approved.

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D. An electric utility submitting a mitigation plan to the commission for review shall concurrently provide evidence sufficient to demonstrate:

(1) that the proposed mitigation plan complies with Section 4 of the Wildfire Utility Mitigation and Liability Act;

(2) the prudence and reasonableness of any proposed investments and expenditures; and

(3) that the proposed mitigation plan is reasonably expected to minimize the risk of catastrophic wildfires, reduce property damage from catastrophic wildfires and protect the public and the environment.

E. An electric utility that has an approved mitigation plan may submit an updated mitigation plan at its discretion; otherwise, an electric utility shall submit an updated mitigation plan every five years or upon the commission's request, whichever occurs first. The commission may request an updated mitigation plan from an electric utility no more than once every five years from the date the current mitigation plan was approved.

F. On or before October 1, 2028, the commission shall promulgate rules to govern the process for submission, review, determination of compliance and approval of mitigation plans.

G. Neither the commission nor the state shall be

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liable for monetary damages in a claim based upon the commission's approval or denial of a mitigation plan."

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

"[NEW MATERIAL] MITIGATION PLANS--REQUIREMENTS.--A mitigation plan shall include, at a minimum, the following:

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

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

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

D. the procedures and standards, which shall meet or exceed nationally recognized vegetation management standards, that the electric utility will use to perform vegetation management;

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

F. how the electric utility will coordinate with

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other electric utilities regarding any shared facilities;

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

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

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

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

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

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

"[NEW MATERIAL] COMPLIANCE REPORTS--CERTIFICATE OF

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COMPLIANCE--NOTICE OF NONCOMPLIANCE--RECOVERY ACTION.--

A. Within one calendar year following the approval of a mitigation plan, and annually 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 forestry division of the department, shall determine whether the electric utility complied with the electric utility's mitigation plan during the preceding year, and:

(1) if the commission determines that the electric utility is in 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 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 submit a report to the commission detailing the corrective action no later than sixty

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days after the notice of noncompliance is issued. If the corrective action has not been completed before the report is submitted, the electric utility shall submit an additional report to the commission upon completing the corrective action.

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

E. If, after reviewing a corrective action report, the commission finds that an electric utility remains out of compliance with the utility's mitigation plan, the commission shall notify the electric utility of that finding, and the electric utility may either undertake further corrective action or seek judicial review pursuant to Section 62-11-1 NMSA 1978.

F. If the commission fails to make a determination within a time period prescribed by this section on an initial compliance report submitted to the commission pursuant to Subsection A of this section, the electric utility shall be deemed to be in compliance with its mitigation plan. Once the commission makes a determination on compliance, an automatic compliance determination is no longer valid, and the determination by the commission shall replace the automatic compliance determination.

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

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(1) take corrective action to come into compliance with a mitigation plan or if a proposed corrective action does not satisfy compliance as determined by the commission; or

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

H. A certificate of compliance is valid until the commission issues a decision on compliance for a subsequent compliance report or revokes the certificate of compliance.

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

J. The commission may delegate authority to review an electric utility's compliance with a mitigation plan pursuant to Section 62-19-9 NMSA 1978."

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

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

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

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this section.

B. If an electric utility includes confidential information with its mitigation plan or compliance report, the confidential information shall be clearly identified as such."

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

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

A. If an electric utility requires access to private, state or local government-owned property to implement an approved mitigation plan, the electric utility shall document efforts to reach the property owner at the property in person and submit a written request to access the property to the property owner through certified or return-receipt mail or electronic message to an email address known to belong to the property owner. If the property owner does not grant or deny access within thirty days of submission of the written request, the property owner shall be deemed to have agreed to the request to access the property for the limited purpose of performing work necessary to the approved mitigation plan.

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

C. If an electric utility requires access to

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property owned by an Indian nation, tribe or pueblo to implement an approved mitigation plan, the electric utility shall consult with the governing body of the Indian nation, tribe or pueblo."

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

"[NEW MATERIAL] COST RECOVERY.--

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

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C. The commission may expressly disallow specific costs from being eligible for recovery by an electric utility only upon a written finding, supported by substantial evidence, that the costs were imprudently incurred or not reasonably related to implementation of the approved mitigation plan.

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. An electric utility that holds a certificate of compliance issued pursuant to the Wildfire Utility Mitigation and Liability Act shall not be liable in a civil action for damages resulting from a wildfire that an origin and cause investigation conducted pursuant to the national wildfire coordinating group wildfire investigation standards determines was caused by vegetation from outside an electric utility's easement, property or right of way coming into contact with the electric utility's equipment or the negligent acts or omissions of a third party occurring outside an electric utility's easement, property or right of way, unless:

(1) the owner of the property on which the

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vegetation originated provided the electric utility with a written demand to remove the vegetation prior to the wildfire's ignition and the electric utility unreasonably refused to comply with the written demand; or

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

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

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

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

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

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

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

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C. Attorney fees and exemplary or punitive damages shall not be awarded in a qualified wildfire civil action.

D. In a qualified wildfire civil action, an electric utility shall not be liable for implementing or not implementing a public safety power shutoff when the electric utility acts in conformity with an approved mitigation plan or acts in good faith based on real-time wildfire risk conditions, even if such action was not specifically enumerated in the approved mitigation plan.

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

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

"[NEW MATERIAL] STATUTE OF LIMITATION.--A qualified wildfire civil action shall be brought within three calendar years after the ignition of the wildfire."

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

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

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

B. The department may provide grants to cooperatives to assist in the implementation of mitigation

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plans.

C. To be eligible for a grant, a cooperative shall have a mitigation plan that has been approved by the commission. A cooperative shall not receive more than one grant per year, and a single grant shall not be greater than one million dollars ($1,000,000).

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

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

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

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

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

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

SECTION 13. Section 30-32-4 NMSA 1978 (being Laws 1882,

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Chapter 61, Section 7, as amended) is amended to read:

"30-32-4. DAMAGES TO PERSON INJURED.--Except for an electric utility operating pursuant to a wildfire mitigation plan approved by the public regulation commission pursuant to the Wildfire Utility Mitigation and Liability Act, if a person sets on fire any woods, marshes or prairies, whether the property is the person's own or not, [~~so as thereby to occasion~~] 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

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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 2028 to purchase equipment and contract for services to carry out the public regulation commission's duties pursuant to the Wildfire Utility Mitigation and Liability Act. Any unexpended balance remaining at the end of fiscal year 2028 shall revert to the general fund.

SECTION 16. APPROPRIATIONS.--

A. Seven hundred fifty thousand dollars ($750,000) is appropriated from the general fund to the forestry division of the energy, minerals and natural resources department for expenditure in fiscal year 2028 to purchase equipment and contract for services necessary to review and consult on mitigation plans submitted pursuant to the Wildfire Utility Mitigation and Liability Act. Any unexpended balance remaining at the end of fiscal year 2028 shall revert to the general fund.

B. Two hundred million dollars ($200,000,000) is appropriated from the general fund to the energy, minerals and natural resources department for expenditure in fiscal year 2028 to fund grants pursuant to Section 11 of the Wildfire Utility Mitigation and Liability Act. Any unexpended balance remaining at the end of fiscal year 2028 shall revert to the

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