

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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underscored material = new
[bracketed material] = delete

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. "department" means the energy, minerals and
25 natural resources department;

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

3 F. "electric utility" means:

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

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

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

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

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

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1 reasonable operational judgment;

2 J. "public safety power shutoff plan" means a plan
3 developed by an electric utility to implement a public safety
4 power shutoff, including how a power shutoff decision is made
5 and who is authorized to make the decision;

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

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

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

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

17 M. "wildfire" means:

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

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

25 SECTION 3. A new section of Chapter 62 NMSA 1978 is

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1 enacted to read:

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

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

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

17 C. The commission, in consultation with the
18 forestry division of the department, shall approve or reject a
19 mitigation plan in writing within one hundred eighty days of
20 submission of the plan, or within up to two hundred seventy
21 days of submission of the plan upon a finding by the commission
22 of good cause for the extension. If the commission does not
23 approve or reject a mitigation plan within a time period
24 permitted by this subsection, the plan shall be deemed
25 approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 I. the community outreach and public awareness

1 efforts that the electric utility will use when implementing a
2 public safety power shutoff;

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

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

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

13 "[NEW MATERIAL] COMPLIANCE REPORTS--CERTIFICATE OF
14 COMPLIANCE--NOTICE OF NONCOMPLIANCE--RECOVERY ACTION.--

15 A. Within one calendar year following the approval
16 of a mitigation plan, and annually thereafter, an electric
17 utility shall submit a compliance report to the commission
18 detailing the electric utility's compliance with its approved
19 mitigation plan, including any modifications and updates made
20 to the mitigation plan.

21 B. No later than one hundred eighty days after the
22 submission of a compliance report, the commission, in
23 consultation with the forestry division of the department,
24 shall determine whether the electric utility complied with the
25 electric utility's mitigation plan during the preceding year,

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1 and:

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

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

10 C. Upon receiving a notice of noncompliance, an
11 electric utility may undertake corrective action to come into
12 compliance with its mitigation plan and submit a report to the
13 commission detailing the corrective action no later than sixty
14 days after the notice of noncompliance is issued. If the
15 corrective action has not been completed before the report is
16 submitted, the electric utility shall submit an additional
17 report to the commission upon completing the corrective action.

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

22 E. If, after reviewing a corrective action report,
23 the commission finds that an electric utility remains out of
24 compliance with the utility's mitigation plan, the commission
25 shall notify the electric utility of that finding, and the

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1 electric utility may either undertake further corrective action
2 or seek judicial review pursuant to Section 39-3-1.1 NMSA 1978.

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

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

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

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

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

23 I. 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 compliance.

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

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

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

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

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

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

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

25 A. If an electric utility requires access to

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

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

16 C. If an electric utility requires access to
17 property owned by an Indian nation, tribe or pueblo to
18 implement an approved mitigation plan, the electric utility
19 shall consult with the governing body of the Indian nation,
20 tribe or pueblo."

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

23 "[NEW MATERIAL] COST RECOVERY.--

24 A. As used in this section, "true-up" means to
25 conduct an accounting reconciliation of the accruals and

1 expenses for a business, project or program that replaces prior
2 estimated figures with actual figures when the actual figures
3 become available.

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

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

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

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

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

5 A. In a qualified wildfire civil action, there
6 shall be a rebuttable presumption that a certificate of
7 compliance is proof of reasonable and prudent preparation for,
8 and mitigation of, wildfire risk. A plaintiff may rebut this
9 presumption only upon proof by clear and convincing evidence
10 through an origin and cause investigation conducted by a
11 federal, state or tribal agency pursuant to the national
12 wildfire coordinating group wildfire investigation standards
13 that the electric utility's operations, facilities or equipment
14 caused the fire and that:

15 (1) the electric utility intentionally or
16 maliciously disregarded the risk of wildfire posed by its
17 operations, facilities or equipment; or

18 (2) the electric utility failed to comply with
19 its mitigation plan;

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

23 (4) the electric utility was not prevented
24 from complying with its plan by a federal agency, property
25 owner, customer or member of the electric utility or local,

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1 state or tribal government.

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

4 (1) for an economic loss, the award shall be
5 the lesser of:

6 (a) the cost to restore damaged property
7 to the property's condition before the wildfire; or

8 (b) the difference between the fair
9 market value of the property before the wildfire and the fair
10 market value of the property after the wildfire without
11 restoration; and

12 (2) for a noneconomic loss, a monetary damage
13 award shall not be greater than five hundred thousand dollars
14 (\$500,000) per plaintiff and may only be awarded for a physical
15 injury that, as established by the competent testimony of a
16 health care provider:

17 (a) creates a high probability of death,
18 causes serious disfigurement or results in permanent or
19 protracted loss or impairment of the function of any body part
20 or organ; or

21 (b) resulted in death.

22 C. When an origin and cause investigation conducted
23 pursuant to the national wildfire coordinating group wildfire
24 investigation standards determines that a wildfire was caused
25 by vegetation from outside an electric utility's easement,

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1 property or right of way coming into contact with the electric
2 utility's equipment, the electric utility is not liable in a
3 civil action for damages resulting from the fire, unless:

4 (1) the owner of the property on which the
5 vegetation originated provided the electric utility with a
6 written demand to remove the vegetation prior to the wildfire's
7 ignition and the electric utility unreasonably refused to
8 comply with the written demand; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 A. As used in this section, "cooperative" means a

1 cooperative nonprofit membership corporation organized pursuant
2 to the Rural Electric Cooperative Act.

3 B. The department may provide grants to
4 cooperatives to assist in the implementation of mitigation
5 plans.

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

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

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

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

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

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

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

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

6 "30-32-4. DAMAGES TO PERSON INJURED.--Except for an
7 electric utility operating pursuant to a wildfire mitigation
8 plan approved by the public regulation commission pursuant to
9 the Wildfire Utility Mitigation and Liability Act, if a person
10 sets on fire any woods, marshes or prairies, whether the
11 property is the person's own or not, [~~so as thereby to~~
12 ~~occasion~~] and causes damage to another person or that other
13 person's property, the [~~person shall make satisfaction in~~
14 ~~double damages to the party injured to be recovered by civil~~
15 ~~action~~] responsible party shall pay the injured party twice the
16 amount of damages, recoverable through a civil action, unless
17 the person is conducting a prescribed burn pursuant to the
18 Prescribed Burning Act."

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

21 "37-1-4. ACCOUNTS--UNWRITTEN CONTRACTS--TORTS--FRAUDS--
22 GENERAL PROVISION.--[~~SEC. 4. These~~] Excepting qualified
23 wildfire civil actions brought against an electric utility for
24 damages resulting from wildfire pursuant to the Wildfire
25 Utility Mitigation and Liability Act, actions founded upon

1 accounts and unwritten contracts, ~~[these]~~ actions brought for
2 injuries to property or for the conversion of personal property
3 or for relief upon the ground of fraud and all other actions
4 not ~~[herein]~~ otherwise provided for in Chapter 37, Article 1
5 NMSA 1978 and specified shall be brought within four years."

6 SECTION 15. APPROPRIATION.--One million five hundred
7 thousand dollars (\$1,500,000) is appropriated from the general
8 fund to the public regulation commission for expenditure in
9 fiscal year 2028 to purchase equipment and contract for
10 services to carry out the public regulation commission's duties
11 pursuant to the Wildfire Utility Mitigation and Liability Act.
12 Any unexpended balance remaining at the end of fiscal year 2028
13 shall revert to the general fund.

14 SECTION 16. APPROPRIATIONS.--

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

24 B. Two hundred million dollars (\$200,000,000) is
25 appropriated from the general fund to the energy, minerals and

1 natural resources department for expenditure in fiscal year
2 2028 to fund grants pursuant to Section 11 of the Wildfire
3 Utility Mitigation and Liability Act. Any unexpended balance
4 remaining at the end of fiscal year 2028 shall revert to the
5 general fund.

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