

SENATE BILL 281

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Pat Woods

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LIABILITY; ENACTING THE RURAL ELECTRIC COOPERATIVE WILDFIRE LIABILITY ACT; REQUIRING WILDFIRE MITIGATION PLANS; PROVIDING FOR A REVIEW BY THE FORESTRY DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; PROVIDING FOR APPROVAL BY THE PUBLIC REGULATION COMMISSION; REQUIRING PUBLIC NOTICE; ESTABLISHING LIMITS ON LIABILITY AND DAMAGE AWARDS; ESTABLISHING A TWO-YEAR LIMITATION ON THE FILING OF CLAIMS; AMENDING SECTION 30-32-4 NMSA 1978 (BEING LAWS 1882, CHAPTER

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61, SECTION 7, AS AMENDED) AND SECTION 37-1-4 NMSA 1978 (BEING LAWS 1880, CHAPTER 5, SECTION 4).

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Rural Electric Cooperative Wildfire Liability Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Rural Electric Cooperative Wildfire Liability Act:

- A. "commission" means the public regulation commission;
- B. "division" means the forestry division of the energy, minerals and natural resources department;
- C. "economic loss" means a monetary loss resulting from a medical expense, interruption in income or business operation or property damage. "Economic loss" includes the monetary cost of a replacement service and to the extent allowed under law a burial;
- D. "electric cooperative" means:
 - (1) a cooperative nonprofit membership corporation as defined in Section 62-15-2 NMSA 1978; or
 - (2) a person, other than an investor-owned public utility or a public utility owned by an investment fund, with electric generation and transmission facilities organized in this state or in another state, independent power producers or developers providing wholesale electric power to a

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cooperative nonprofit membership corporation organized pursuant to the Rural Electric Cooperative Act;

E. "noneconomic loss" means discomfort, disfigurement, future pain and emotional distress, loss of consortium, loss due to death, loss of enjoyment of life, loss of use, mental anguish, pain and suffering and the value of life itself;

F. "plan" means a wildfire mitigation plan; and

G. "wildfire" means a fire originating from an unplanned ignition, such as an accidental human-caused fire, a fire caused by lightning or a prescribed fire that is declared a wildfire by a federal or state emergency management or land management agency pursuant to authority granted by law.

SECTION 3. [NEW MATERIAL] ELECTRIC COOPERATIVE WILDFIRE MITIGATION PLAN--REQUIREMENTS.--

A. To receive the benefits under the Rural Electric Cooperative Wildfire Liability Act, an electric cooperative shall prepare a plan that includes the:

(1) electric cooperative's size and a detailed description and map of the electric cooperative's:

(a) service area; and

(b) electric system within the electric cooperative's service area;

(2) methods that the electric cooperative uses to assess wildfire risk within the electric cooperative's

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service area;

(3) procedures and standards that the electric cooperative uses to perform vegetation management;

(4) electric cooperative's inspection and maintenance procedures for the electric cooperative's electric system;

(5) electric cooperative's design and construction procedures and standards for the electric cooperative's electric system;

(6) electric cooperative's situational awareness program, including weather monitoring and forecasting procedures;

(7) electric cooperative's emergency response procedures in the event of a wildfire ~~SCONC~~→;←~~SCONC~~ ~~SCONC~~→;

including:

(a) emergency contacts for the cooperative during a wildfire emergency;

(b) communication procedures to contact federal and state agencies responsible for fire suppression, fire departments, first responders and local governments; and

(c) emergency contact email addresses, phone numbers and applicable radio frequencies;←~~SCONC~~

(8) electric cooperative's operational procedures during wildfire conditions, including red flag warning protocols and alternate recloser settings procedures;

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and

(9) electric cooperative's procedures to restore the electric cooperative's electrical system in the event of a wildfire.

B. An electric cooperative's plan shall also include:

(1) a description of the electric cooperative's awareness efforts regarding the electric cooperative's wildfire mitigation efforts, including vegetation management and operational controls;

(2) confirmation that the electric cooperative's plan and annual reports are made publicly available;

(3) a description of the plan's mitigation measures, including modifications to facilities, and preventative programs that the electric cooperative is implementing to reduce the risk of the electric cooperative's equipment igniting a wildfire, including pole and right-of-way inspections;

(4) the factors that the electric cooperative considered to balance the components of the plan with the need to provide continuous electricity service to the electric cooperative's service area and the costs and feasibility; and

(5) the potential impact of the plan's mitigation measures on public safety, first responders and

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health and communication infrastructure.

SECTION 4. [NEW MATERIAL] WILDFIRE MITIGATION PLAN--
REVIEW--APPROVAL.--

A. An electric cooperative's plan shall be effective for ~~SCONC~~→five←~~SCONC~~ ~~SCONC~~→three←~~SCONC~~ years upon the date of approval by the commission. An electric cooperative shall update and resubmit its plan for approval by the commission at the end of each subsequent ~~SCONC~~→five-~~year~~←~~SCONC~~ ~~SCONC~~→three-year←~~SCONC~~ period following the initial approval by the commission.

B. An electric cooperative shall submit its plan to the division for review and recommendations ~~SCONC~~→during a ~~period starting on November 1 of each year and ending on February 28 of the following year and~~←~~SCONC~~ prior to submitting the plan to the commission for approval.

C. An electric cooperative shall include the review and recommendations of its plan from the division in its submission of the plan to the commission; provided that, when the electric cooperative has not received a response from the division within ~~SCONC~~→forty-five←~~SCONC~~ ~~SCONC~~→sixty←~~SCONC~~ days of submitting its plan for review, the electric cooperative may submit the plan to the commission without the division's review.

D. The commission shall approve or reject a plan within ~~SCONC~~→forty-five←~~SCONC~~ ~~SCONC~~→sixty←~~SCONC~~ days of

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submission of a plan pursuant to this section. When a plan has not been approved or rejected by commission, the plan is approved as a matter of law. When the commission rejects an electric cooperative's plan, the commission shall issue a decision in writing detailing the specific reasons for the rejection. An electric cooperative shall then have thirty days to modify and resubmit the plan to the commission for approval.

E. Within thirty days of receiving approval of a plan, an electric cooperative shall post a non-confidential version of the plan that excludes elements that would compromise the security of its electric system on its website in a clearly identifiable and accessible manner.

SECTION 5. [NEW MATERIAL] ANNUAL REPORT--PUBLIC NOTICE.--

On July 1, 2026 and on July 1 of each subsequent year, an electric cooperative shall post a report on the electric cooperative's plan on the electric cooperative's website in a clearly identifiable and accessible manner. The report shall include a description of the electric cooperative's compliance with the plan, modifications or updates that have been made to the plan and the plan's approval status pursuant to the Rural Electric Cooperative Wildfire Liability Act.

SECTION 6. [NEW MATERIAL] WILDFIRE MITIGATION PLAN

APPROVAL--EFFECT ON LIABILITY--RECOVERY FOR LOSS.--

A. In a civil action or claim made against an electric cooperative, upon providing proof that the electric

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cooperative's plan has been approved by the commission and that its annual reports adhere to the requirements as set forth in Section 5 of the Rural Electric Cooperative Wildfire Liability Act, or that the electric cooperative was denied the ability to comply with an approved plan by a federal agency, landowner, member of the electric cooperative, state or tribal government, the electric cooperative is:

(1) presumed to have reasonably and prudently prepared for and mitigated the risk of wildfire for the electric cooperative's electric system and operations;

(2) exempt from liability for losses resulting from a wildfire; and

(3) not liable for failure to implement a public safety power shutoff policy unless one is mandated by the commission.

B. A plaintiff may recover economic losses or noneconomic losses from an electric cooperative as a result of a wildfire when the plaintiff demonstrates, by a showing of clear and convincing evidence, that an origin and cause investigation conducted by a national wildfire coordination group or wildland fire investigator certified pursuant to federal law has determined that:

(1) the cause of the wildfire is a powerline or related in any way to the electric cooperative's equipment or operations;

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(2) the electric cooperative's conduct intentionally set the wildfire or intentionally caused the wildfire to be set while knowing that to do so was wrong and that harm to others might be the result; and

(3) the electric cooperative's conduct was the actual and proximate cause of the wildfire and loss to the plaintiff.

**SECTION 7. [NEW MATERIAL] LIMITATIONS--FILING CLAIMS--
DAMAGE AWARDS.--**

A. A claim against an electric cooperative for loss resulting from a wildfire shall be filed in district court within two years after the date of ignition of the fire or it shall be forever barred.

B. A plaintiff in a civil action against an electric cooperative for loss due to a wildfire, or the estate thereof, may recover for:

(1) economic loss; and

(2) noneconomic loss to the extent that the noneconomic loss is due to death or bodily injury resulting from a burn. A claim for noneconomic loss resulting from a burn shall be denied unless the plaintiff submits to the court a diagnosis in writing by a medical provider that the burn is the result of the wildfire that serves as the basis of claim.

C. A state agency or a fire response agency that incurs costs to suppress a wildfire may file a suit in district

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court to reclaim the incurred costs pursuant to the limitations on liability in the Rural Electric Cooperative Wildfire Liability Act.

D. The total damages for any and all claims that can be awarded against an electric cooperative and its insurer per wildfire, no matter the total number of claimants or suits or actions as a result of that wildfire, shall not exceed two million dollars (\$2,000,000).

SECTION 8. [NEW MATERIAL] NO LIMIT ON DEFENSES.--Nothing in the Rural Electric Cooperative Wildfire Liability Act shall limit the defenses that an electric cooperative may be entitled to raise in an action for damages caused by wildfire.

SECTION 9. Section 30-32-4 NMSA 1978 (being Laws 1882, Chapter 61, Section 7, as amended) is amended to read:

"30-32-4. DAMAGES TO PERSON INJURED.--Except for an electric cooperative operating pursuant to a wildfire mitigation plan approved pursuant to the Rural Electric Cooperative Wildfire Liability Act, if a person sets on fire any woods, marshes or prairies, whether the person's own or not, so as thereby to occasion damage to another person or that person's property, the person shall make satisfaction in double damages to the party injured to be recovered by civil action, unless the person is conducting a prescribed burn pursuant to the Prescribed Burning Act."

SECTION 10. Section 37-1-4 NMSA 1978 (being Laws 1880,

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Chapter 5, Section 4, as amended) is amended to read:

"37-1-4. ACCOUNTS--UNWRITTEN CONTRACTS--TORTS--FRAUDS--GENERAL PROVISION.--[~~SEC. 4. These~~] Excepting actions brought against an electric cooperative for damages due to wildfire pursuant to the Rural Electric Cooperative Wildfire Liability Act, actions founded upon accounts and unwritten contracts, [these] 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 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.

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