

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 02/03/2026

Check all that apply:

Bill Number: HB 267

Original Correction
Amendment Substitute

Sponsor: Rep. Meredith A. Dixon; Sen. Pat Woods

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Wildfire Utility Mitigation & Liability Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: HB 267 establishes a framework to encourage electric utilities to prepare for and mitigate wildfire risk and limits the liability faced by utilities that demonstrate compliance with approved wildfire mitigation plans. Specifically, HB 267 allows electric utilities to submit detailed “mitigation plans” to the New Mexico Public Regulation Commission (hereafter “Commission”) that detail their efforts to mitigate wildfire risk. The bill allows electric utilities to recover the costs of mitigation activities from ratepayers and has provisions that enable utilities to coordinate with the government for mitigation purposes.

Once electric utilities submit a mitigation plan that is approved by the Commission, the utilities must demonstrate that they are in substantial compliance with the plan on a yearly basis. If the Commission finds that an electric utility is in compliance with its approved plan, it will issue a “certificate of compliance” to the utility. HB 267 protects electric utilities holding these certificates from civil liability for any wildfires that occur as a result of its operations, facilities, or equipment by placing substantial barriers against suing them for wildfire-related damages and capping their liability for noneconomic injuries.

Section 1: Adds a new Section to NMSA 1978, Chapter 62 that provides that “Sections 1-12 of this act may be cited as the ‘Wildfire Utility Mitigation and Liability Act.’”

Section 2: Adds a new Section to NMSA 1978, Chapter 62 that sets out definitions for terms used throughout the Act. These terms include “commercially sensitive information,” “commission,” “confidential information,” “division,” “electric utility,” “mitigation plan,” “national wildfire coordinating group,” “public safety power shut off,” “public safety power shut off plan,” “qualified wildfire civil action,” “rider,” and “wildfire.”

Importantly, “qualified wildfire civil action” is defined as “a civil action against a utility (1) in which a plaintiff seeks damages resulting from a wildfire that originated from operations, facilities, or equipment of the electric utility and (2) that has received a certificate of compliance from the commission.”

Section 3: Adds a new Section to NMSA 1978 Chapter 62:

Subsection A provides that a utility may submit a mitigation plan to the Commission for approval. If the “utility demonstrates substantial compliance with the approved mitigation

plan within one year,... the Commission shall issue the utility a certificate of compliance” which “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.”

Subsection B provides that utilities may start submitting mitigation plans for Commission review and approval beginning on August 1, 2026.

Subsection C provides that the “Commission shall approve or reject a mitigation plan in writing within 180 days” of the plan’s submission. If the Commission does not take action on the plan within 180 days, it shall be approved.

Subsection D provides that utilities with “an approved mitigation plan shall submit an updated mitigation plan upon the Commission’s request.” Such requests can only be made once every five years from the date the mitigation plan is approved.

Subsection E provides that the “Commission may promulgate rules to govern the process of submission, review and approval of mitigation plans.”

Subsection F states that “[n]either the Commission nor the State shall be liable for monetary damages in a claim based upon the Commission’s approval or denial of a mitigation plan.”

Section 4: Adds a new Section of NMSA 1978, Chapter 62. It states that mitigation plans shall include the following information:

Subsection A provides that a mitigation plan will include an “electric utility’s service territory and a description of the methods by the electric utility will assess wildfire risk within” that territory.

Subsection B provides that a mitigation plan will include “the electric utility’s situational awareness program, including weather monitoring.”

Subsection C provides that a mitigation plan will include “the procedures, standards and schedules that the electric utility will use to inspect, maintain and operate its transmission and distribution infrastructure.”

Subsection D provides that a mitigation plan will include “the procedures and standards that the electric utility will use to perform vegetation management.”

Subsection E provides that a mitigation plan will include “the proposed mitigation measures, modifications, replacements and upgrades to facilities and preventive programs that the electric utility will implement to reduce the risk of its electrical facilities causing a wildfire...”

Subsection F provides that a mitigation plan will include “how the electric utility will coordinate with other electric utilities regarding any shared facilities.”

Subsection G provides that a mitigation plan will include a description of an electric utility’s public safety power shutoff plan, if it has one. It will also include 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."

Subsection H provides that a mitigation plan will include "the procedures that the electric utility will use to restore its electrical system in the event of a wildfire."

Subsection I provides that a mitigation plan will include "the community outreach and public awareness efforts that the electric utility will use when implementing a public safety power shutoff."

Subsection J provides that a mitigation plan will include "the electric utility's emergency response procedures in the event of a wildfire, including" for coordination with emergency managers.

Subsection K provides that a mitigation plan will include "procedures for coordination with first responders and government agencies officials..."

Section 5: Adds a new Section of NMSA 1978, Chapter 62 titled "Compliance Reports – Certificate of Compliance – Notice of Noncompliance – Recovery Action."

Subsection A provides that, "[o]n 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 plan updates and modifications.

Subsection B provides that, within 180 days of receiving a compliance report, the Commission—in consultation with the forestry division of the Energy, Minerals, and Natural Resources Department (hereafter "forestry division")—will "determine whether the electric utility substantially complied with the electric utility's mitigation plan during the preceding year." "[I]f the Commission determines that the electric utility is in substantial compliance, the Commission shall issue a certificate of compliance to the electric utility." "[I]f 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."

Subsection C provides that electric utilities that receive notices of noncompliance "may undertake corrective action to come into compliance with its mitigation plan" and may submit a report to the Commission explaining the corrective action once completed.

Subsection D provides that "the Commission shall determine whether the electric utility is in substantial compliance" within 60 days of receiving a report of corrective action from the electric utility.

Subsection E provides that the Commission will notify electric utilities that are out of substantial compliance. The electric utility can then "undertake further corrective action or seek judicial review pursuant to" NMSA 1978, Section 39-3-1.1.

Subsection F provides that a failure by the Commission "to make a determination within a time period prescribed by this section" will result in the electric utility being "deemed to be in substantial compliance with its mitigation plan."

Subsection G provides that the Commission will revoke an electric utility's certificate of compliance if it fails to (1) "take corrective action" or (2) "update a mitigation plan as requested by the Commission."

Subsection H provides that "[n]either 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."

Section 6: Adds a new Section to NMSA 1978, Chapter 62 titled "Posting of Mitigation Plans – Confidentiality."

Subsection A provides that "[t]he Commission shall post... an electric utility's current mitigation plan, compliance report, and... applicable, certificate of compliance or... noncompliance" on its website. It shall not, however, "post or make publicly available any information designated as confidential" pursuant to this Section.

Subsection B provides that, to designate material confidential, it must be marked "CONFIDENTIAL – NOT FOR PUBLIC RELEASE" and "attached as a separate appendix to the mitigation plan or annual report."

Section 7: Adds a new Section to NMSA 1978, Chapter 62 titled "Mitigation Plan Implementation – Property Access."

Subsection A provides that an electric utility will submit a written request to a property owner if it requires access to private, state, or local government-owned property to implement its mitigation plan. This request must be sent via post pre-paid mail or email to an email address belonging to the property owner. "If the property owner does not grant or deny access within thirty days of submission of the request, the property owner shall be deemed to have agreed to the request to access the property for the limited purpose of performing the work necessary to the approved mitigation plan."

Subsection B provides that, when requested by an electric utility, local law enforcement can provide "reasonable assistance necessary to carry out wildfire mitigation activities."

Subsection C provides that "[a]n electric utility shall not be liable... for damage to a property resulting from an action to implement a mitigation plan unless the electric utility" acted intentionally or maliciously.

Section 8: Adds a new Section to NMSA 1978, Chapter 62 titled "Cost Recovery."

Subsection A provides that a "true-up" means "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."

Subsection B provides that "[i]f the Commission approves a mitigation plan for an electric utility" that is subject 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... made to implement the mitigation plan." "[T]he mitigation plan cost recovery rider is subject to change based on" a "true-up" of costs. "[T]he Commission shall annually true-up a mitigation plan cost recovery rider upon the submission of the electric utility's compliance reports..."

Subsection C provides that “[t]he Commission may expressly disallow specific costs from being eligible for recovery by an electric utility through a written order.”

Subsection D provides that “[c]osts incurred by an electric utility resulting from compliance with an approved mitigation plan are deemed reasonable and recoverable unless” the Commission has disallowed them through a written order pursuant to Subsection C.

Section 9: Adds a new Section to NMSA 1978, Chapter 62 titled “Qualified Wildfire Civil Actions – Limitations on Liability and Damages.”

Subsection A establishes one of the principal barriers to successful suit against an electric utility that has been issued a certificate of compliance. It provides that, in a qualified wildfire civil action, there shall be a rebuttable presumption that a certificate of compliance is proof of reasonable and prudent preparation for and mitigation of wildfire risk.

To rebut the presumption, a plaintiff would need to provide clear and convincing evidence through an origin and cause investigation conducted by a federal, state, or Tribal agency pursuant to the national wildfire coordinating group wildfire investigation standards. The investigation must show “(1) that the electric utility’s operations, facilities, or equipment caused the fire; (2) that the electric utility failed to substantially comply with its mitigation plan”; (3) that its failure to comply with the mitigation plan was the proximate cause of plaintiff’s damages; (4) that the electric utility was not prevented from complying with its mitigation plan by a third party; and (5) that “the electric utility intentionally or maliciously disregarded the risk of wildfire posed by its operations, facilities, or equipment.”

Subsection B supplements these barriers by placing caps on monetary damages available in a qualified wildfire action. For economic loss, the award will “be the lesser of the cost to restore the damaged property to the property’s condition before the wildfire,” or the difference in property’s fair market value before and after the fire. For noneconomic loss, the monetary damages are capped at \$500,000 and are only available for physical injuries that either (a) created a high probability of death, disfigurement, or permanent bodily impairment or (b) resulted in death.

Subsection C provides that, “when an origin and cause investigation” performed “to national wildfire coordinating group investigation standards determines that a wildfire was caused by vegetation outside” of “an electric utility’s easement”, the electric utility is not liable unless the owner asked the electric utility in writing to remove the vegetation before the fire and the utility unreasonably refused to comply with the demand. Alternatively, the plaintiff could establish, through clear and convincing evidence, that (1) “the electric utility’s equipment, facilities, or operations substantially contributed to the fire,” (2) the electric utility failed to comply with its mitigation plan to maintain the easement, (3) the electric utility’s failure to comply with its mitigation plan was the proximate cause of the plaintiff’s claimed damages, (4) the electric utility was not prevented from complying with its mitigation plan by the third party, and (5) “the utility intentionally or maliciously disregarded the risk of wildfire posed by its operations, facilities, or equipment.”

Subsection D provides that the procedural provisions and damage caps of the Tort Claims

Act will apply in qualified wildfire civil actions against electric utilities operated by the State or one of its political subdivisions.

Subsection E provides that “attorney fees and exemplary or punitive damages shall not be awarded in a qualified wildfire civil action.”

Subsection F provides that “an electric utility will not be liable for implementing or not implementing a public safety power shutoff when the electric utility acts” pursuant to an approved mitigation plan.

Subsection G provides that nothing in this Section shall limit the defenses that an electric utility can raise in a qualified wildfire action.

Section 10: Adds a new Section to NMSA 1978, Chapter 62 that provides “Statute of Limitation – A qualified wildfire civil action shall be brought within one calendar year after the ignition of the wildfire.”

Section 11: Adds a new Section to NMSA 1978, Chapter 62 titled “Wildfire Mitigation Grants – Eligibility.”

Subsection A defines “cooperative” to mean “a cooperative nonprofit membership corporation organized pursuant to the Rural Electric Cooperative Act” for the purposes of this Section.

Subsection B provides that the forestry “division may provide grants to cooperatives to assist” them in implementing mitigation plans.

Subsection C provides that a cooperative must have an approved mitigation plan to be eligible for a grant and that “[a] cooperative shall not receive more than one grant per year, and a single grant” is capped at \$1,000,000.

Subsection D provides that the forestry “division shall promulgate rules to establish the criteria... for grants.” Grants must be (1) “prioritized to achieve the greatest anticipated mitigation of wildfire risk” and (2) accompanied by a finding by the forestry division that “the incidental benefit to the cooperative [in obtaining the grant] is outweighed by the benefits to the State” of wildfire risk reduction. Grant funding must be used only for “actions to implement an approved mitigation plan.”

Section 12: Adds a new Section to NMSA 1978, Chapter 62 titled “Rulemaking- The commission may promulgate rules necessary to implement the Wildfire Utility Mitigation and Liability Act.”

Section 13: Amends NMSA 1978, Section 30-32-4 to exclude “electric utility[ies] operating pursuant to a wildfire mitigation plan approved by the public regulation commission pursuant to the Wildfire Utility Mitigation and Liability Act” from New Mexico’s statute establishing civil liability for wildfire damages.

Section 14: Amends NMSA 1978, Section 37-1-4 to provide an exception to New Mexico’s four-year statute of limitations for “qualified wildfire civil actions brought against an electric utility for damages resulting from wildfire pursuant to the Wildfire Utility Mitigation and Liability Act.” It also amends the four-year limitations provision to restrict its scope to “all

other actions not otherwise provided for in Chapter 37, Article 1 NMSA 1978.”

Section 15: Appropriates \$1,500,000 from the general fund to the Commission to purchase equipment and to contract for services to carry out its responsibilities under the Wildfire Utility Mitigation and Liability Act. The money must be expended in FY 2027 and any remaining balances revert to the general fund.

Section 16: Appropriates \$10,000,000 to the forestry division “to provide grants to cooperative nonprofit membership corporations...” The money must be expended in FYs 2027 and 2028 and any remaining balances revert to the general fund.

Section 17: Appropriates \$750,000 to the forestry division to purchase equipment and to contract for services to carry out its responsibilities under the Wildfire Utility Mitigation and Liability Act. The money must be expended in FY 2027 and any remaining balances revert to the general fund.

Section 18: Establishes an effective date of January 1, 2027 for Section 9 of the Act and July 1, 2026 for all other sections.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

None.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 161 is a companion bill advanced by the same sponsors that contains identical terms.

This bill also tangentially relates to HB 204, which would require insurers to disclose the models they use for pricing wildfire insurance risk and to offer discounts to homeowners who can demonstrate that mitigation measures have reduced their risk of wildfire damage.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.