

LFC Requester:

Austin Davidson

**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*Date Prepared: 2/10/2026

Check all that apply:

Bill Number: SB 161Original          Correction XAmendment    Substitute   

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

Short Title: WILDFIRE MITIGATION  
& LIABILITY ACT

Agency Name and Code: 430 – Public Regulation Commission

Person Writing: Mclee KerollePhone: (505)490-2696 Email: jerri.mares@prc.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
	\$1,500.00	Nonrecurring	General Fund

**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
<b>Total</b>			\$1,200.	\$1,200.	Recurring	GF

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

Synopsis: Senate Bill 161 (SB 161) enacts the “Wildfire Utility Mitigation and Liability Act” in Chapter 62 NMSA 1978. The bill establishes a voluntary Commission approval process for electric utility wildfire mitigation plans, requires annual compliance reporting, and authorizes the Commission to issue certificates of compliance that function as proof of reasonable and prudent preparation/mitigation in certain wildfire civil actions. The bill also requires public posting of plans and reports (with a confidentiality appendix process), sets property-access and liability provisions for plan implementation, directs the Commission to approve a permanent wildfire mitigation cost-recovery rider (with annual true-ups), and creates limitations on liability and damages in “qualified wildfire civil actions,” including a one-year statute of limitations. The bill establishes EMNRD Forestry Division grants for rural electric cooperatives to implement approved plans and makes appropriations to the Commission and EMNRD to implement the Act.

### **FISCAL IMPLICATIONS**

SB 161 provides a \$1.5M appropriation to the Public Regulation Commission for FY27 to purchase equipment and contract for services to carry out the Commission duties under the Act (Section 15).

SB 161 only appropriates financing for the Commission to carry out the duties under the Act for FY27, and it’s unclear how continued implementation would be achieved, including ongoing workload if plans/annual reports expand across multiple utilities.

### **SIGNIFICANT ISSUES.**

The Bill allows judicial review of certain noncompliance determinations by the Commission in district court. This represents a significant departure from the existing Commission decision framework (appellate review directly before the Supreme Court). As a result, SB 161 will likely require additional Commission resources as it provides noncompliant parties with more opportunities to appeal Commission noncompliance findings (appeal to district court, then potential writs of certiorari to the Court of Appeals and Supreme Court) and could materially constrain the Commission’s ability to issue timely and effective noncompliance determinations.

Section 3 (B) allows an electric utility to submit a mitigation plan to the commission for review and approval beginning August 1, 2026. However, the effective date of Section 3 of this act is July 1, 2026, and does not provide sufficient time for the commission to promulgate rules to govern the process for submission, review and approval of mitigation plans (Section 3 (E)).

If the Commission does not approve/reject a plan within 180 days, the plan is deemed approved (Section 3(C)). If the Commission misses any compliance-decision deadline, the utility is deemed in substantial compliance (Section 5(F)). This limited review period leaves no room for extraordinary circumstances or complex adjudicatory proceedings, if necessary.

A certificate serves as proof of “reasonable and prudent preparation” in a qualified wildfire civil action (Section 3(A)), with a rebuttable presumption and heightened rebuttal requirements (clear and convincing evidence, National Wildfire Coordinating Group (NWCG) investigation

standards, plus intent/malice elements) (Section 9(A)). The consequences of the certificate are significant. As described above, the judicial review and time periods may not allow the Commission to make meaningful noncompliance findings.

The Commission must concurrently approve a permanent mitigation cost-recovery rider when it approves a plan (Section 8(B)). Plan-related costs are “deemed reasonable and recoverable unless expressly disallowed” (Section 8(D)). This is significant because it flips the default from prudence review to automatic recovery unless disallowed, potentially weakening ratepayer protections and increasing consumer electric bills outside a full rate case. Additionally, the requirement for concurrent approvals may require the Commission to approve cost recovery of unknown or estimated costs.

For Commission-jurisdictional electric public utilities, the bill requires a permanent mitigation plan cost-recovery rider to recover “reasonably incurred” investments/expenditures (including costs of capital) associated with an approved mitigation plan, with annual true-ups (Section 8). This could increase consumer electric bills depending on the scope and pace of utility mitigation spending.

### **PERFORMANCE IMPLICATIONS.**

The bill establishes mandatory timelines for Commission action, including 180-day plan determinations, 180-day annual compliance determinations, and 60-day corrective-action determinations. These requirements will significantly increase workload and may affect the Commission’s ability to meet both new and existing obligations, particularly as docket volume increases. In addition, the requirement to conduct rider true-ups as part of ongoing oversight functions will expand the scope of substantive review responsibilities assigned to Commission advocacy staff.

### **ADMINISTRATIVE IMPLICATIONS.**

Implementation will require additional administrative resources, including staff time, legal support and IT/security resources, to manage confidentiality requirements, website posting obligations, rider true-up process, and any necessary rulemaking. While the appropriation allows for contracting support to assist with application analysis, it does not account for the increased administrative workload associated with higher docket volume. Moreover, the rider true-up process is most appropriately performed by Agency staff rather than contractors, necessitating further internal resource allocation.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP.**

Relates to HB 171 WILDFIRE FUND ACT which creates an alternative scheme for wildfire mitigation.

### **TECHNICAL ISSUES.**

Potential technical and drafting issues include:

- Jurisdictional scope: The definition of “electric utility” includes municipally owned utilities exempt from Commission regulation under Section 62-6-4 NMSA 1978 (Section 2(E)(2)), yet the bill contemplates Commission approval and certificates for their plans.

- Undefined standards: “Substantial compliance” is central to certificates and liability protections but is not defined.
- Section 11 creates a new section of Chapter 62 NMSA 1978 for Wildfire Mitigation Grants--Eligibility providing for EMNRD’s Forestry Division to issue grants and is unrelated to the jurisdiction of the PRC. Therefore, this section may not belong within Chapter 62 NMSA 1978.

**OTHER SUBSTANTIVE ISSUES.**

N/A

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL.**

Status Quo

**AMENDMENTS**

N/A