

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 267

**57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

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

14 B. Beginning August 1, 2026, 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 upon the commission's request. The  
5 commission may request an updated mitigation plan from an  
6 electric utility no more than once every five years from the  
7 date the current mitigation plan was approved.

8           E. On or before October 1, 2027, the commission  
9 shall promulgate rules to govern the process for submission,  
10 review and approval of mitigation plans.

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

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

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

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

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

24           C. the procedures, standards and schedules that the  
25 electric utility will use to inspect, maintain and operate its

1 transmission and distribution infrastructure;

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

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

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

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

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

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

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

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

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

11 "[NEW MATERIAL] COMPLIANCE REPORTS--CERTIFICATE OF  
12 COMPLIANCE--NOTICE OF NONCOMPLIANCE--RECOVERY ACTION.--

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

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

25 (1) if the commission determines that the

1 electric utility is in substantial compliance, the commission  
2 shall issue a certificate of compliance to the electric  
3 utility; or

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

9 C. Upon receiving a notice of noncompliance, an  
10 electric utility may undertake corrective action to come into  
11 compliance with its mitigation plan and, upon completing the  
12 corrective action, submit a report to the commission detailing  
13 the corrective action.

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

18 E. If, after reviewing a corrective action report,  
19 the commission finds that an electric utility remains out of  
20 substantial compliance with the utility's mitigation plan, the  
21 commission shall notify the electric utility of that finding  
22 and the electric utility may either undertake further  
23 corrective action or seek judicial review pursuant to Section  
24 39-3-1.1 NMSA 1978.

25 F. If the commission fails to make a determination

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1 within a time period prescribed by this section, the electric  
2 utility shall be deemed to be in substantial compliance with  
3 its mitigation plan.

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

6 (1) take corrective action to come into  
7 compliance with a mitigation plan; or

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

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

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

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

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

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

1 this section.

2 B. If an electric utility includes confidential  
3 information with its mitigation plan or compliance report, the  
4 confidential information shall be marked "CONFIDENTIAL - NOT  
5 FOR PUBLIC RELEASE", and the confidential information shall be  
6 attached as a separable appendix to the mitigation plan or  
7 annual report."

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

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

12 A. If an electric utility requires access to  
13 private, state or local government-owned property to implement  
14 an approved mitigation plan, the electric utility shall submit  
15 a written request to access the property to the property owner  
16 through certified or return-receipt mail or electronic message  
17 to an email address known to belong to the property owner. If  
18 the property owner does not grant or deny access within thirty  
19 days of submission of the request, the property owner shall be  
20 deemed to have agreed to the request to access the property for  
21 the limited purpose of performing work necessary to the  
22 approved mitigation plan.

23 B. Upon request by an electric utility, a local law  
24 enforcement agency may provide personnel, equipment, traffic  
25 control, public safety support or other reasonable assistance

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1 necessary to carry out wildfire mitigation activities.

2 C. An electric utility shall not be held liable in  
3 a civil action for damage to a property resulting from an  
4 action to implement a mitigation plan unless the electric  
5 utility intentionally or maliciously causes damage to a  
6 property."

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

9 "[NEW MATERIAL] COST RECOVERY.--

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

15 B. If the commission approves a mitigation plan for  
16 an electric public utility regulated by the commission pursuant  
17 to the Public Utility Act, the commission shall concurrently  
18 approve a permanent mitigation plan cost recovery rider to  
19 allow the electric utility to recover reasonably incurred  
20 investments and expenditures, including the costs of capital,  
21 made to implement the mitigation plan; provided that the  
22 mitigation plan cost recovery rider is subject to change based  
23 on a subsequent truing-up of the costs of capital investments  
24 and expenses. The commission shall annually true-up a  
25 mitigation plan cost recovery rider upon submission of the

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1 electric utility's compliance reports pursuant to Section 5 of  
2 the Wildfire Utility Mitigation and Liability Act.

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

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

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

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

16 A. In a qualified wildfire civil action, there  
17 shall be a rebuttable presumption that a certificate of  
18 compliance is proof of reasonable and prudent preparation for,  
19 and mitigation of, wildfire risk. A plaintiff may rebut this  
20 presumption only upon proof by clear and convincing evidence  
21 through an origin and cause investigation conducted by a  
22 federal, state or tribal agency pursuant to the national  
23 wildfire coordinating group wildfire investigation standards  
24 that:

25 (1) the electric utility's operations,

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1 facilities or equipment caused the fire;

2 (2) the electric utility failed to  
3 substantially comply with its mitigation plan;

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

7 (4) the electric utility was not prevented  
8 from complying with its plan by a federal agency, property  
9 owner, customer or member of the electric utility or local,  
10 state or tribal government; and

11 (5) the electric utility intentionally or  
12 maliciously disregarded the risk of wildfire posed by its  
13 operations, facilities or equipment.

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

16 (1) for an economic loss, the award shall be  
17 the lesser of:

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

20 (b) the difference between the fair  
21 market value of the property before the wildfire and the fair  
22 market value of the property after the wildfire without  
23 restoration; and

24 (2) for a noneconomic loss, a monetary damage  
25 award shall not be greater than five hundred thousand dollars

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1 (\$500,000) per plaintiff and may only be awarded for a physical  
2 injury that, as established by the competent testimony of a  
3 health care provider:

4 (a) creates a high probability of death,  
5 causes serious disfigurement or results in permanent or  
6 protracted loss or impairment of the function of any body part  
7 or organ; or

8 (b) resulted in death.

9 C. When an origin and cause investigation conducted  
10 pursuant to the national wildfire coordinating group wildfire  
11 investigation standards determines that a wildfire was caused  
12 by vegetation from outside an electric utility's easement,  
13 property or right of way coming into contact with the electric  
14 utility's equipment, the electric utility is not liable in a  
15 civil action for damages resulting from the fire, unless:

16 (1) the owner of the property on which the  
17 vegetation originated provided the electric utility with a  
18 written demand to remove the vegetation prior to the wildfire's  
19 ignition and the electric utility unreasonably refused to  
20 comply with the written demand; or

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

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

25 (b) the electric utility failed to

1 substantially comply with its mitigation plan with respect to  
2 maintenance of the easement, property or right of way;

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

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

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

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

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

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

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

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

6           "[NEW MATERIAL] STATUTE OF LIMITATION.--A qualified  
7 wildfire civil action shall be brought within one calendar year  
8 after the ignition of the wildfire."

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

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

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

15           B. The department may provide grants to  
16 cooperatives to assist in the implementation of mitigation  
17 plans.

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

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

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

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

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

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

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

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

18 "30-32-4. DAMAGES TO PERSON INJURED.--Except for an  
19 electric utility operating pursuant to a wildfire mitigation  
20 plan approved by the public regulation commission pursuant to  
21 the Wildfire Utility Mitigation and Liability Act, if a person  
22 sets on fire any woods, marshes or prairies, whether the  
23 property is the person's own or not, [~~so as thereby to~~  
24 ~~occasion~~] and causes damage to another person or that other  
25 person's property, the [~~person shall make satisfaction in~~

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1 ~~double damages to the party injured to be recovered by civil~~  
 2 ~~action]~~ responsible party shall pay the injured party twice the  
 3 amount of damages, recoverable through a civil action, unless  
 4 the person is conducting a prescribed burn pursuant to the  
 5 Prescribed Burning Act."

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

8 "37-1-4. ACCOUNTS--UNWRITTEN CONTRACTS--TORTS--FRAUDS--  
 9 GENERAL PROVISION.--~~[SEC. 4. Those]~~ Excepting qualified  
 10 wildfire civil actions brought against an electric utility for  
 11 damages resulting from wildfire pursuant to the Wildfire  
 12 Utility Mitigation and Liability Act, actions founded upon  
 13 accounts and unwritten contracts, ~~[those]~~ actions brought for  
 14 injuries to property or for the conversion of personal property  
 15 or for relief upon the ground of fraud and all other actions  
 16 not ~~[herein]~~ otherwise provided for in Chapter 37, Article 1  
 17 NMSA 1978 and specified shall be brought within four years."

18 SECTION 15. APPROPRIATION.--One million five hundred  
 19 thousand dollars (\$1,500,000) is appropriated from the general  
 20 fund to the public regulation commission for expenditure in  
 21 fiscal year 2027 to purchase equipment and contract for  
 22 services to carry out the public regulation commission's duties  
 23 pursuant to the Wildfire Utility Mitigation and Liability Act.  
 24 Any unexpended balance remaining at the end of fiscal year 2027  
 25 shall revert to the general fund.

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