

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

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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

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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

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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 trueing-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

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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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