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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 267/HENRCS

SHORT TITLE: Wildfire Utility Mitigation & Liability Act

SPONSOR: House Energy, Environment and Natural Resources Committee

LAST ORIGINAL
UPDATE: 2/17/2026 **DATE:** 2/09/2026 **ANALYST:** Rodriguez

APPROPRIATION* (dollars in thousands)

FY26	FY27	Recurring or Nonrecurring	Fund Affected
	\$1,500.0	Nonrecurring	General Fund
	\$10,000.0	Recurring	General Fund
	\$750.0	Nonrecurring	General Fund

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PRC	No fiscal impact	No fiscal impact	At least \$800.0	At least \$800.0	Recurring	General Fund
EMNRD	No fiscal impact	No fiscal impact	At least \$625.0	At least 625.0	Recurring	General Fund
Total	No fiscal impact	No fiscal impact	At least \$1,425.0	At least \$1,425.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Bill 161

Relates to House Bill 171

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Office of Superintendent of Insurance

Public Regulation Commission

Energy, Minerals and Natural Resources Department

Agency or Agencies That Were Asked for Analysis but did not Respond

Department of Finance and Administration

New Mexico Attorney General

SUMMARY

Synopsis of House Energy, Environment and Natural Resources Committee Substitute for House Bill 267

The House Energy, Environment and Natural Resources committee substitute for House Bill 267 (HB267/HENRCS) enacts the Wildfire Utility Mitigation and Liability Act, which creates a framework for electric utilities to develop, implement, and report on wildfire mitigation plans that include Public Regulation Commission (PRC) approval, annual compliance reviews, cost recovery mechanisms, and public transparency. At the same time, it provides utilities with liability protections and a rebuttable presumption of reasonable wildfire risk mitigation in civil actions, limits on damages, and exemptions from certain statutes. HB267/HENRCS provides grants to support electric cooperatives in mitigation efforts.

The act is pertinent to both investor-owned utilities and electric cooperatives. This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

Appropriations. HB267/HENRCS contains three distinct appropriations from the general fund—totalling \$12.3 million from the general fund to Energy, Minerals and Natural Resources Department (EMNRD) and PRC.

The first appropriation is \$1.5 million to PRC for expenditure in FY27 to purchase equipment and contract for services to carry out the agency’s duties pursuant to the Wildfire Utility Mitigation and Liability Act.

The second is \$10 million to EMNRD for expenditure in FY27 and FY28 to provide grants to cooperative nonprofit membership corporations organized pursuant to the Rural Electric Cooperative Act pursuant to Section 11 of the Wildfire Utility Mitigation and Liability Act. The third appropriation is for \$750 thousand to EMNRD for expenditure in FY27 to purchase equipment and contract for services to carry out the division's duties pursuant to the Wildfire Utility Mitigation and Liability Act.

Mitigation Plans. Beginning in August 2026, Section 3 allows electric utilities to submit wildfire mitigation plans to PRC, with consultation with the Forestry Division at EMNRD, for approval, provides for certificates of compliance that can support a utility’s defense in wildfire litigation, limits update requests from PRC to once every five years, and shields PRC and the state from liability tied to plan approval or denial.

Section 4 outlines requirements for mitigation plans, including proposed mitigation measures, public safety power shutoff plans, and emergency response procedures in the event of a wildfire, which are fires that originate from an unplanned ignition, including from electrical lines or other utility infrastructure.

Section 5 requires utilities to file annual compliance reports with PRC, establishes PRC review of plans to issue a certificate of compliance or issue noncompliance notices with opportunities for corrective action and judicial review, and authorizes PRC to revoke certificates of compliance. The committee substitute allows PRC to delegate authority to review mitigation plans.

Section 6 requires PRC to publicly post utilities' mitigation plans, compliance reports, and certificate of compliance or notice of noncompliance, while protecting confidential information by labeling it and placing it in a separate, nonpublic appendix.

Section 7 allows electric utilities to request access to private or government property to carry out approved mitigation plans—with access deemed granted if no response is received within 30 days—authorizes local law enforcement to assist with mitigation activities, and limits utility liability for resulting property damage unless it is intentional or malicious.

Utility Protections. Section 8 requires PRC to approve a cost recovery rider alongside approval of mitigation plans with an annual “true up”—defined as reconciling estimated versus actual costs—based on the utility's compliance reports. The committee substitute allows PRC to disallow specific costs, if it makes a written determination, backed by strong evidence, that those costs were either imprudent or not reasonably connected to carrying out the approved mitigation plan.

Section 9 establishes a rebuttable presumption that a utility's certificate of compliance showed reasonable wildfire risk mitigation, sets strict conditions for overcoming that presumption, limits damages in wildfire lawsuits, and outlines additional liability protections for electric utilities.

In more detail, Section 9 specifies that in a qualified wildfire civil action, a utility's certificate of compliance creates a rebuttable presumption of reasonable wildfire risk mitigation. However, a plaintiff can only overcome with clear evidence from an official investigation showing the utility caused the fire, failed its mitigation plan, and acted intentionally or maliciously, without external prevention.

Section 9 limits damages for economic losses to the lesser of the cost to restore damaged property or the difference between the fair market value of the property before the wildfire and the fair market value of the property after the wildfire without restoration. The committee substitute defines economic loss as damage other than physical harm to a person. The section limits noneconomic damages to \$500 thousand per plaintiff, only if the physical injuries were deemed extreme or deadly by a healthcare provider. Section 9 also prohibits attorney fees and punitive damages from being awarded in these civil actions.

Finally, Section 9 specifies that utilities are generally not liable for fires caused by vegetation outside their easement unless they were notified and unreasonably refused action, provides liability protections to public power shutoffs if use conforms with mitigation plan or was done in good faith based on real-time wildfire risk conditions, holds state or local utilities to limitations under the Tort Claims Act, and allows utilities to raise any other legal defenses available in a civil action.

Section 10 sets the statute of limitations in these civil actions to one calendar year after the ignition of wildfire.

Grants to Electric Cooperatives. Section 11 provides grants to electric cooperative to assist with the implementation of mitigation plans. Section 11 requires cooperatives to have an approved mitigation plan, limits them to one grant per year, and specifies that a grant cannot be greater than \$1 million. Section 11 directs EMNRD to create rules for establishing criteria,

processes, and application requirements for the grant.

Additional Provisions. Section 13 amends Section 30-32-4, which establishes that any person who negligently sets fire to woods, marshes, or prairies and causes damage to another person or their property, is liable for double damages in a civil action, to exempt wildfire civil actions brought against an electric utility who has an approved wildfire mitigation plan.

Section 14 amends Section 37-1-4 NMSA 1978, which requires legal action to be initiated within four years of the accrual of the claim, to exempt wildfire civil actions brought against an electric utility for damages resulting from a wildfire.

FISCAL IMPLICATIONS

The \$10 million appropriation contained in this bill is considered a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY28 shall revert to the general fund. Although HB267/HENRCS does not specify future appropriations, establishing a new grant program could create an expectation the program will continue in future fiscal years; therefore, this cost is assumed to be recurring.

The other two appropriations in this bill—\$750 thousand for EMNRD and \$1.5 million for PRC—are considered nonrecurring, intended to cover one-time costs for equipment and contracted services needed to fulfill each agency’s responsibilities under the act. Any unspent funds at the end of FY27 will revert to the general fund.

The responsibilities outlined in HB267/HENRCS for PRC would require ongoing staff hours. The analysis assumes PRC would require at least five full-time employees to maintain compliance with the act and additional funding in contractual services and in the other costs category.

Similarly, EMNRD would require additional staff to carry out its duties in HB267/HENRCS. EMNRD estimates it would need at least five full-time employees, including a grant manager, senior forester, and three foresters. The staff would provide both planning support and grants management for each of the six forestry districts in the state.

SIGNIFICANT ISSUES

Possible Impact on Property Insurance. As noted by the Office of Superintendent of Insurance (OSI), the bill does not address the possible impacts on property insurance companies and policy homeowners. OSI argues the bill would ultimately place the financial loss on the consumer, either through loss of property, increased insurance rates, and increased service rates.

Rebuttal Presumption. OSI notes the bill replaces the traditional negligence standard in court with a rebuttable presumption—a PRC-issued certificate of compliance for a utility’s wildfire mitigation plan would serve as proof of reasonable and prudent wildfire risk preparation and mitigation. The presumption can be overturned only if a plaintiff demonstrates, by clear and convincing evidence from an origin-and-cause investigation conducted by a federal, state, or tribal agency in accordance with National Wildfire Coordinating Group standards, that the utility intentionally or maliciously disregarded the wildfire risk posed by its operations, facilities, or

equipment.

Review and Approval of Plans. OSI notes HB267/HENRCS allows mitigation plans to be automatically approved without PRC formal action if certain timeframes are not met. The committee substitute allows PRC to extend the approval or rejection of a plan by 275 days if the agency can find a good cause for extension. The change responds to concerns previously raised by OSI and PRC that the original timeline was too restrictive for reviewing deficient plans and did not provide sufficient flexibility for extraordinary circumstances.

Updates to Plans. OSI notes geographic locations, land use requirements, and weather and climate considerations may require that mitigation plans be in place and updated or replaced frequently. The committee substitute allows utilities to submit an updated plan at its discretion; otherwise, PRC can request an updated plan no more than once every five years.

Limits to Noneconomic Damages. OSI notes that HB267/HENRCS limits noneconomic damages to a specific set of injuries. OSI notes other types of noneconomic damages, such as pain and suffering, are not included as a type of injury for which damages may be paid.

Recognized Standards. OSI and EMNRD note HB267/HENRCS does not specify if mitigation standards must be scientifically based and uniformly acceptable. OSI notes the bill should include specific, science-based mitigation requirements because mitigation is a communitywide effort and failure to include science-based mitigation standards can limit the effectiveness of other statewide mitigation efforts.

Inspection and Enforcement. OSI notes HB267/HENRCS does not include mandatory inspections and enforcement mechanisms for PRC or any other agency to ensure utilities are complying with their mitigation plans.

Permissive Participation in Mitigation Plans and Corrective Action. OSI notes the bill only requires permissive submission of a mitigation plan and permissive implementation of corrective action. It is unclear if this is intentional. However, the bill makes it clear that if a utility company does not submit a mitigation plan and undergo the actions required in the bill, the utility company would not receive the other protections against wildfire civil action.

Statute of Limitations. HB267/HENRCS states a claim shall be filed one calendar year after the date of ignition of the fire or it shall be forever barred. OSI notes the proposed statute of limitation is significantly shorter than what is required for other civil actions. For example, the statute of limitations for personal injury and wrongful death is three years while the statute of limitations for property damage is four years. EMNRD shares similar concerns and notes that wildfire origin-and-cause investigations, particularly those involving utility infrastructure, can take longer than one year to complete due to the complexity of evidence collection, multiagency coordination, and post-fire access constraints. The one-year limit may prevent complete investigation and attribution.

Judicial Review. HB267/HENRCS allows for judicial review of certain noncompliance determinations. PRC notes this is a significant departure from the typical review of PRC decisions—typically appellate review the before the Supreme Court—and will likely demand significant PRC resources, such as a trial team, that will prevent the PRC from addressing pending matters every time a utility seeks to challenge a determination that the utility remains

noncompliant following its receipt of a corrective action report. This may be a significant limitation on PRC’s ability to make meaningful noncompliance findings.

Automatic Cost Recovery Riders. PRC notes HB267/HENRCS flips the default from prudence review to automatic cost 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 PRC to approve cost recovery of unknown or estimated costs. HB267/HENRCS requires PRC to concurrently approve permanent cost-recovery riders when approving a mitigation plan.

Increase in Rates. PRC notes HB267/HENRCS could increase consumer electric bills depending on the scope and pace of utility mitigation spending. HB267/HENRCS allows electric utilities to recover reasonably incurred investments and expenditures associated with approved mitigation plans.

EMNRD Involvement. As noted by EMNRD, HB267/HENRCS should specify EMNRD involvement, noting the Energy Conservation and Management Division has expertise in grid hardening and operations, as well as housing the Office of Regulatory Affairs, which is the mechanism by which EMNRD intervenes in PRC hearings.

Mitigation Plan. EMNRD notes HB267/HENRCS also does not require a public safety power shutoff plan. Such a plan should be a requirement, not an option, in any mitigation plan.

PERFORMANCE IMPLICATIONS

As noted by PRC, HB267/HENRCS could significantly increase the agency’s workload. PRC notes the mandatory timelines for PRC action—180-day plan determinations, 180-day annual compliance determinations, and 60-day corrective-action determinations—could affect PRC’s ability to meet new and existing obligations, particularly as docket volume increases. In addition, the requirement to conduct rider true-ups as part of ongoing oversight functions would expand the scope of substantive review responsibilities assigned to PRC advocacy staff.

ADMINISTRATIVE IMPLICATIONS

PRC notes HB267/HENRCS would increase the agency’s administrative responsibilities. PRC states implementation would require additional internal administrative resources—staff, legal, and IT/security support—to manage confidentiality, public posting, rulemaking, and the rider true-up process, as contracting support may not fully address the increased workload from higher docket volumes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB267/HENRCS duplicates Senate Bill 161.

HB267/HENRCS relates to House Bill 171, which enacts the Wildfire Fund Act, an alternative proposal for wildfire mitigation.

TECHNICAL ISSUES

Defining Confidential Information. OSI notes HB267/HENRCS may benefit from mirroring language for “confidential information” to language in the Inspection of Public Records Act (Section 14-2-1), which defines “confidential information” as “information concerning information technology systems, the publication of which would reveal specific vulnerabilities that compromise or allow unlawful access to such systems.”

Jurisdictional Scope. PRC notes the definition of “electric utility” includes municipally owned utilities, which are exempt from PRC regulation under Section 62-6-4. However, HB267/HENRCS requires PRC to review their mitigation plans.

Defining Substantial Compliance. PRC notes how HB267/HENRCS requires “substantial compliance” related to migration plans but does not provide a clear definition for “substantial compliance.”

Section 11 in Chapter 62. PRC notes that Section 11 of HB267/HENRCS may not belong in Chapter 62 NMSA 1978. Section 11 creates the wildfire mitigation grants at EMNRD. Chapter 62 is related to public utility regulation.

ALTERNATIVES

OSI notes California uses a “California wildfire fund,” which is an insurance-like system that pools money across participating utilities to pay for wildfire claims. This alternative system is meant to stabilize utility finances while not limiting liability or damages.

JR/hg/sgs/JR/dw