

1 SENATE BILL 281

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO LIABILITY; ENACTING THE RURAL ELECTRIC COOPERATIVE
12 WILDFIRE LIABILITY ACT; REQUIRING WILDFIRE MITIGATION PLANS;
13 PROVIDING FOR A REVIEW BY THE FORESTRY DIVISION OF THE ENERGY,
14 MINERALS AND NATURAL RESOURCES DEPARTMENT; PROVIDING FOR
15 APPROVAL BY THE PUBLIC REGULATION COMMISSION; REQUIRING PUBLIC
16 NOTICE; ESTABLISHING LIMITS ON LIABILITY AND DAMAGE AWARDS;
17 ESTABLISHING A TWO-YEAR LIMITATION ON THE FILING OF CLAIMS;
18 AMENDING SECTION 30-32-4 NMSA 1978 (BEING LAWS 1882, CHAPTER
19 61, SECTION 7, AS AMENDED) AND SECTION 37-1-4 NMSA 1978 (BEING
20 LAWS 1880, CHAPTER 5, SECTION 4).
21

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
24 through 8 of this act may be cited as the "Rural Electric
25 Cooperative Wildfire Liability Act".

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1 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
2 Rural Electric Cooperative Wildfire Liability Act:

3 A. "commission" means the public regulation
4 commission;

5 B. "division" means the forestry division of the
6 energy, minerals and natural resources department;

7 C. "economic loss" means a monetary loss resulting
8 from a medical expense, interruption in income or business
9 operation or property damage. "Economic loss" includes the
10 monetary cost of a replacement service and to the extent
11 allowed under law a burial;

12 D. "electric cooperative" means:

13 (1) a cooperative nonprofit membership
14 corporation as defined in Section 62-15-2 NMSA 1978; or

15 (2) a person, other than an investor-owned
16 public utility or a public utility owned by an investment fund,
17 with electric generation and transmission facilities organized
18 in this state or in another state, independent power producers
19 or developers providing wholesale electric power to a
20 cooperative nonprofit membership corporation organized pursuant
21 to the Rural Electric Cooperative Act;

22 E. "noneconomic loss" means discomfort,
23 disfigurement, future pain and emotional distress, loss of
24 consortium, loss due to death, loss of enjoyment of life, loss
25 of use, mental anguish, pain and suffering and the value of

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1 life itself;

2 F. "plan" means a wildfire mitigation plan; and

3 G. "wildfire" means a fire originating from an
4 unplanned ignition, such as an accidental human-caused fire, a
5 fire caused by lightning or a prescribed fire that is declared
6 a wildfire by a federal or state emergency management or land
7 management agency pursuant to authority granted by law.

8 SECTION 3. [NEW MATERIAL] ELECTRIC COOPERATIVE WILDFIRE
9 MITIGATION PLAN--REQUIREMENTS.--

10 A. To receive the benefits under the Rural Electric
11 Cooperative Wildfire Liability Act, an electric cooperative
12 shall prepare a plan that includes the:

13 (1) electric cooperative's size and a detailed
14 description and map of the electric cooperative's:

15 (a) service area; and

16 (b) electric system within the electric
17 cooperative's service area;

18 (2) methods that the electric cooperative uses
19 to assess wildfire risk within the electric cooperative's
20 service area;

21 (3) procedures and standards that the electric
22 cooperative uses to perform vegetation management;

23 (4) electric cooperative's inspection and
24 maintenance procedures for the electric cooperative's electric
25 system;

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1 (5) electric cooperative's design and
2 construction procedures and standards for the electric
3 cooperative's electric system;

4 (6) electric cooperative's situational
5 awareness program, including weather monitoring and forecasting
6 procedures;

7 (7) electric cooperative's emergency response
8 procedures in the event of a wildfire;

9 (8) electric cooperative's operational
10 procedures during wildfire conditions, including red flag
11 warning protocols and alternate recloser settings procedures;
12 and

13 (9) electric cooperative's procedures to
14 restore the electric cooperative's electrical system in the
15 event of a wildfire.

16 B. An electric cooperative's plan shall also
17 include:

18 (1) a description of the electric
19 cooperative's awareness efforts regarding the electric
20 cooperative's wildfire mitigation efforts, including vegetation
21 management and operational controls;

22 (2) confirmation that the electric
23 cooperative's plan and annual reports are made publicly
24 available;

25 (3) a description of the plan's mitigation

1 measures, including modifications to facilities, and
2 preventative programs that the electric cooperative is
3 implementing to reduce the risk of the electric cooperative's
4 equipment igniting a wildfire, including pole and right-of-way
5 inspections;

6 (4) the factors that the electric cooperative
7 considered to balance the components of the plan with the need
8 to provide continuous electricity service to the electric
9 cooperative's service area and the costs and feasibility; and

10 (5) the potential impact of the plan's
11 mitigation measures on public safety, first responders and
12 health and communication infrastructure.

13 SECTION 4. [NEW MATERIAL] WILDFIRE MITIGATION PLAN--
14 REVIEW--APPROVAL.--

15 A. An electric cooperative's plan shall be
16 effective for five years upon the date of approval by the
17 commission. An electric cooperative shall update and resubmit
18 its plan for approval by the commission at the end of each
19 subsequent five-year period following the initial approval by
20 the commission.

21 B. An electric cooperative shall submit its plan to
22 the division for review and recommendations prior to submitting
23 the plan to the commission for approval.

24 C. An electric cooperative shall include the review
25 and recommendations of its plan from the division in its

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1 submission of the plan to the commission; provided that, when
2 the electric cooperative has not received a response from the
3 division within forty-five days of submitting its plan for
4 review, the electric cooperative may submit the plan to the
5 commission without the division's review.

6 D. The commission shall approve or reject a plan
7 within forty-five days of submission of a plan pursuant to this
8 section. When a plan has not been approved or rejected by
9 commission, the plan is approved as a matter of law. When the
10 commission rejects an electric cooperative's plan, the
11 commission shall issue a decision in writing detailing the
12 specific reasons for the rejection. An electric cooperative
13 shall then have thirty days to modify and resubmit the plan to
14 the commission for approval.

15 E. Within thirty days of receiving approval of a
16 plan, an electric cooperative shall post a non-confidential
17 version of the plan that excludes elements that would
18 compromise the security of its electric system on its website
19 in a clearly identifiable and accessible manner.

20 SECTION 5. [NEW MATERIAL] ANNUAL REPORT--PUBLIC NOTICE.--

21 On July 1, 2026 and on July 1 of each subsequent year, an
22 electric cooperative shall post a report on the electric
23 cooperative's plan on the electric cooperative's website in a
24 clearly identifiable and accessible manner. The report shall
25 include a description of the electric cooperative's compliance

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1 with the plan, modifications or updates that have been made to
2 the plan and the plan's approval status pursuant to the Rural
3 Electric Cooperative Wildfire Liability Act.

4 SECTION 6. [NEW MATERIAL] WILDFIRE MITIGATION PLAN
5 APPROVAL--EFFECT ON LIABILITY--RECOVERY FOR LOSS.--

6 A. In a civil action or claim made against an
7 electric cooperative, upon providing proof that the electric
8 cooperative's plan has been approved by the commission and that
9 its annual reports adhere to the requirements as set forth in
10 Section 5 of the Rural Electric Cooperative Wildfire Liability
11 Act, or that the electric cooperative was denied the ability to
12 comply with an approved plan by a federal agency, landowner,
13 member of the electric cooperative, state or tribal government,
14 the electric cooperative is:

15 (1) presumed to have reasonably and prudently
16 prepared for and mitigated the risk of wildfire for the
17 electric cooperative's electric system and operations;

18 (2) exempt from liability for losses resulting
19 from a wildfire; and

20 (3) not liable for failure to implement a
21 public safety power shutoff policy unless one is mandated by
22 the commission.

23 B. A plaintiff may recover economic losses or
24 noneconomic losses from an electric cooperative as a result of
25 a wildfire when the plaintiff demonstrates, by a showing of

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1 clear and convincing evidence, that an origin and cause
2 investigation conducted by a national wildfire coordination
3 group or wildland fire investigator certified pursuant to
4 federal law has determined that:

5 (1) the cause of the wildfire is a powerline
6 or related in any way to the electric cooperative's equipment
7 or operations;

8 (2) the electric cooperative's conduct
9 intentionally set the wildfire or intentionally caused the
10 wildfire to be set while knowing that to do so was wrong and
11 that harm to others might be the result; and

12 (3) the electric cooperative's conduct was the
13 actual and proximate cause of the wildfire and loss to the
14 plaintiff.

15 SECTION 7. [NEW MATERIAL] LIMITATIONS--FILING CLAIMS--
16 DAMAGE AWARDS.--

17 A. A claim against an electric cooperative for loss
18 resulting from a wildfire shall be filed in district court
19 within two years after the date of ignition of the fire or it
20 shall be forever barred.

21 B. A plaintiff in a civil action against an
22 electric cooperative for loss due to a wildfire, or the estate
23 thereof, may recover for:

24 (1) economic loss; and

25 (2) noneconomic loss to the extent that the

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1 noneconomic loss is due to death or bodily injury resulting
2 from a burn. A claim for noneconomic loss resulting from a
3 burn shall be denied unless the plaintiff submits to the court
4 a diagnosis in writing by a medical provider that the burn is
5 the result of the wildfire that serves as the basis of claim.

6 C. A state agency or a fire response agency that
7 incurs costs to suppress a wildfire may file a suit in district
8 court to reclaim the incurred costs pursuant to the limitations
9 on liability in the Rural Electric Cooperative Wildfire
10 Liability Act.

11 D. The total damages for any and all claims that
12 can be awarded against an electric cooperative and its insurer
13 per wildfire, no matter the total number of claimants or suits
14 or actions as a result of that wildfire, shall not exceed two
15 million dollars (\$2,000,000).

16 SECTION 8. [NEW MATERIAL] NO LIMIT ON DEFENSES.--Nothing
17 in the Rural Electric Cooperative Wildfire Liability Act shall
18 limit the defenses that an electric cooperative may be entitled
19 to raise in an action for damages caused by wildfire.

20 SECTION 9. Section 30-32-4 NMSA 1978 (being Laws 1882,
21 Chapter 61, Section 7, as amended) is amended to read:

22 "30-32-4. DAMAGES TO PERSON INJURED.--Except for an
23 electric cooperative operating pursuant to a wildfire
24 mitigation plan approved pursuant to the Rural Electric
25 Cooperative Wildfire Liability Act, if a person sets on fire

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1 any woods, marshes or prairies, whether the person's own or
2 not, so as thereby to occasion damage to another person or that
3 person's property, the person shall make satisfaction in double
4 damages to the party injured to be recovered by civil action,
5 unless the person is conducting a prescribed burn pursuant to
6 the Prescribed Burning Act."

7 SECTION 10. Section 37-1-4 NMSA 1978 (being Laws 1880,
8 Chapter 5, Section 4, as amended) is amended to read:

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

19 SECTION 11. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2025.