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FISCAL IMPACT REPORT

SPONSOR Woods LAST UPDATED 2/20/2025
ORIGINAL DATE 2/13/2025
BILL Senate Bill
SHORT TITLE Rural Electric Co-op Wildfire Liability Act NUMBER 281/aSCONC
ANALYST Davidson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PRC	No fiscal impact	\$167.5	\$177.6	\$345.1	Recurring	General Fund
EMNRD	No fiscal impact	\$150.0	\$150.0	\$300.0	Recurring	General Fund
Total	No fiscal impact	\$317.5	\$327.6	\$645.1	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Duplicates House Bill 334

Sources of Information

LFC Files

Agency Analysis Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of SCONC Amendment to Senate Bill 281

The Senate Conservation Committee amendment to Senate Bill 281 adds additional information requirements for wildfire mitigation plans, requires the plans be updated every three years instead of five, and sets a precise submission date for wildfire mitigation plans.

Synopsis of Senate Bill 281

Senate Bill 281 (SB281) creates the Rural Electric Cooperative Wildfire Liability Act, which requires rural electric cooperatives to develop and submit wildfire mitigations plans to the Forestry Division of the Energy, Minerals and Natural Resources Department (EMNRD) and to the Public Regulation Commission (PRC) for approval. The bill also places limits on the amount of liability for damage awards for claimants, in the event a wildfire is caused by an electric cooperative's equipment or operations, was set intentionally by the cooperative, or the cooperative's conduct was the proximate cause of the wildfire.

The bill sets a damage claim ceiling, regardless of the total number of claimants, at \$2 million.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

Analysis from the Energy, Minerals and Natural Resources Department (EMNRD) notes implementation Senate Bill 281 would require one additional full-time equivalency (FTE) for technical review and then 0.5 FTE for legal review. The total cost for these 1.5 additional FTEs would be an additional \$150 thousand in recurring funds.

Analysis from PRC notes implementation of Senate Bill 281 would require one Utilities Division Engineer I position (\$128,553), one sixteenth of an Office of General Counsel attorney (\$9,433), one eighth of a legal attorney (\$18,216), one sixteenth of a hearing examiner (\$11,302). The total of annual cost to PRC would be approximately \$167,504 in FY26 and \$177,555 in FY27.

SIGNIFICANT ISSUES

Wildfires. Wildfires will be an ever-present part of the state’s future, and the state’s risk of wildfires only continues as snowpacks decline, average precipitation drops, and average temperatures rise. New Mexico already has a high risk of wildfire—higher than 82 percent of states in the United States. Wildfire risk is based on likelihood, intensity, exposure, and susceptibility. New Mexico is in the 86th percentile for risk to homes.

In New Mexico, 46 percent of homes and buildings are in direct exposure areas, meaning they are adjacent to flammable vegetation, or risk ignition from indirect sources such as embers and home-to-home ignition. The remaining homes are in areas with minimum exposure (or not likely to be subjected to wildfire) or in indirect exposure (close to indirect sources).

Analysis from the Western Fire Chiefs Association notes between 2016 and 2020, 19 percent of all wildfires were caused by electric power networks, typically from downed lines, vegetation contact, conductor slap, or repetitive faults. Equipment issues at a utility company caused the largest fire in Texas’s history and power lines ignited the recent fires in Maui.¹ The analysis recommends utilities and electricity providers invest in vegetation management, ground distribution lines, install sensors with fast-trip settings, and invest in innovation of electrical grids.²

Agency Analysis. Analysis from PRC notes Senate Bill 281 would require the agency to add wildfire mitigation expertise to the agency’s review process to credibly assess the wildfire cooperative plans the bill would require. While not specifically called for in the bill, PRC analysis notes additional expertise would be necessary.

PRC analysis expresses concerns relating to the bill’s reference to non-confidential plans being posted within thirty days of approval. PRC analysis notes this could be interpreted to mean plans contain confidential material, which could impede agency operations and complicate agency process relating to review of cooperative wildfire plans. PRC analysis also notes the bill could create scenarios where the review process will be complicated by:

¹ <https://www.nytimes.com/2024/03/22/business/energy-environment/electric-utilities-wildfires-climate-change.html>

² <https://wfca.com/wildfire-articles/power-lines-and-wildfires/>

necessitating the entry of an appropriate protective order, determining whether and to what extent the plan under review contains information that actually satisfies the legal standards governing whether something is or is not confidential in the context of Commission proceedings, consideration for the segregation of filings that meet the legal standard for being designated as confidential, the conduct of public proceedings implicated by the review and consideration of confidential materials against the backdrop of laws such as the Open Meetings Act, the Inspection of Public Records Act, etc. The procedural implications resulting from this particular facet of SB 281 are myriad and potentially far-reaching

Analysis from EMNRD points out the bill's current definition of wildfire is not consistent with the state's Forest Conservation Act and recommends the bill be amended to use the definition from the National Wildland Fire Coordinating Group.

EMNRD suggests the bill should be amended to clarify the Forestry Division will only review the cooperative's vegetation management plans for reasonableness and are not liable for any opinions. EMNRD also recommends adding standards of fuel mitigation to proposed wildfire mitigation plans and recommends adding guidance in the bill to electric cooperatives to monitor national weather and fire service websites for forecasting and awareness.

EMNRD analysis also recommends the bill specify electric cooperative's emergency wildfire communication procedures before and during red flag events (high wildfire risk). The list should include a list of emergency contact numbers and/or radio frequencies. EMNRD analysis also notes the bill should require electric cooperatives to participate in annual pre-wildland fire season coordination and communication meetings with other stakeholders.

EMNRD suggests that review of the cooperative's plan should take place either in the winter or early spring to provide Forestry adequate time for review. If the review is within or during Forestry's fire season, or if it is during an active wildfire, review could take longer than the proposed 45 days. The SCONC amendment increases the time limit to 60 days to accommodate this. EMNRD also recommends the review should be more frequent than every five years, due to the variability of fire conditions and other mitigating factors. The SCONC amendment moves the frequency to every three years instead of five to accommodate this.

EMNRD expresses concern that by limiting damage claims to \$2 million, regardless of number of claimants or culpability, funds may be insufficient to cover the significant costs associated with wildfire suppression and recovery. Further, for a state agency to be reimbursed or recover costs requires a state agency to file a suit in a district court. Senate Bill 281 does not establish whether an agency may recoup legal or administrative costs associated with the common suit and reimbursement process.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 281 duplicates House Bill 334.

Senate Memorial 2 proposes to create a wildfire study group, with stakeholders from electric cooperatives and investor-owned utilities, topics discussed Senate Bill 281.