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FISCAL IMPACT REPORT

SPONSOR Dixon/Gonzales/Chatfield/Sanchez/Vincent **LAST UPDATED** _____
ORIGINAL DATE 2/14/2025
SHORT TITLE Rural Electric Co-op Wildfire Liability Act **BILL NUMBER** House Bill 334
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 Senate Bill 281

Sources of Information

LFC Files

Agency Analysis Received From
 Energy, Minerals and Natural Resources Department (EMNRD)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of House Bill 334

House Bill 334 (House Bill 334) 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 creates limits on the amount of liability for damage awards for claimants in the event a wildfire is caused by an electric cooperative's equipment, operations, was set intentionally by the cooperative, or the cooperatives conduct was the proximate cause of the wildfire. The bill sets a damage claim ceiling, regardless of total number of claimants, at \$2 million.

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

FISCAL IMPLICATIONS

Analysis from EMNRD notes implementation House Bill 334 would require one additional FTE for technical review and then .5 FTE for legal review. The total for these 1.5 additional FTE would be an additional \$150 thousand in recurring funds.

Analysis from PRC notes implementation of House Bill 334 would require:

1 Utilities Division Engineer I position (\$128.6 thousand), 1/16 of Office of General Counsel attorney (\$9,433), 1/8 Legal attorney (\$18.2 thousand), 1/16 of a hearing examiner (\$11.3 thousand). For a total of annual cost to PRC of \$167.5 thousand in FY26 and \$ \$177.6 thousand in FY27.

SIGNIFICANT ISSUES

Wildfires. Wildfires will be an ever-present part of the state's future, and the state's risk of wildfires will only increase as snowpacks decline, average precipitation drops, and average temperatures rise. New Mexico already has a higher risk of wildfire compared to 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 wildfire risk to homes.

In New Mexico, 46 percent of homes and buildings are located in direct exposure areas, meaning they are adjacent to flammable vegetation and 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 either downed lines, vegetation contact, conductor slap, or repetitive faults. The largest fire in Texas's history was caused by equipment issues from a utility company and the fires in Maui were also ignited by power lines.¹ The analysis identifies best practices for wildfire prevention for utilities and electricity providers is vegetation management, undergrounding distribution lines, investing in installing sensors with fast-trip settings, and investing in innovation of electrical grids.²

Agency Analysis. Analysis from PRC notes House Bill 334 would require the agency to add wildfire mitigation expertise to the agency's review process in order to credibly assess the wildfire cooperative plans the bill would require. While not specifically called for in the bill, PRC analysis notes the 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:

HB334 appears to contemplate a dimension of confidentiality that will necessarily pertain to such review proceedings. See Section 4, Paragraph E (discussing the public posting of non-confidential versions of the plan), which suggests by implication that the plan submitted for the Commission's review will contain confidential information. This further implicates Commission process referable to information deemed confidential,

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/>

which will complicate the review by, for example, 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 HB334 are myriad and potentially far-reaching.

Analysis from EMNRD notes 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 analysis notes the bill should be amended to clarify the Forestry Division will only review the cooperative's vegetation management plans for reasonableness and not are not liable for any opinions. EMNRD also recommends adding standards of fuel mitigation to the 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 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 analysis recommends the planned review of cooperative plans should be in either the winter or early spring to provide the Forestry Division with time to review the plan. If the plan review is within or during Forestry's filed season, or if it is during an active wildfire, review could take longer than the proposed 45 days. EMNRD also recommends the review should be more frequent than every 5 years, due to the variability of fire conditions and other complicating factors.

EMNRD analysis notes House Bill 334's limiting of damage claims to \$2 million, regardless of number of claimants or culpability, could not be enough 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 suit in a district court; House Bill 334 does not establish whether an agency may recoup legal or administrative costs associated with the common suit and reimbursement process.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 334 duplicates Senate Bill 281.

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

AD/hj