

LFC Requester:	Austin Davidson
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 02/06/2025 *Check all that apply:*
Bill Number: SB 281 Original Correction
 Amendment Substitute

Sponsor: Sen. Pat Woods **Agency Name and Code:** 430 – Public Regulation Commission
Short Title: RURAL ELECTRIC CO-OP WILDFIRE LIABILITY ACT **Number:** _____
Person Writing: J. Bogatko **Phone:** (505)490-2696 **Email:** jerri.mares@prc.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$167.504	\$177.555	\$345.059	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 281 is comprised of 11 Sections. Nine of the Sections present new material with the remaining two Sections carrying amendments to existing statutes. The Sections and their contents are summarized as follows:

Section 1 sets forth the title for Sections 1 through 8 of the proposed act as the “Rural Electric Cooperative Wildfire Liability Act”.

Section 2 establishes definitions for the proposed Rural Electric Cooperative Wildfire Liability Act. Paragraph A defines “commission” to mean the public regulation commission; Paragraph B defines “division” to mean the forestry division of the energy, minerals and natural resources department; Paragraph C defines “economic loss”; Paragraph D defines “electric cooperative”; Paragraph E defines “noneconomic loss”; Paragraph F defines “plan” to mean a wildfire mitigation plan; and Paragraph G defines “wildfire” to mean “a fire originating from an unplanned ignition, such as an accidental human-caused fire, a fire caused by lightning or a prescribed fire that is declared a wildfire by a federal or state emergency management or land management agency pursuant to authority granted by law.”

Section 3 sets forth provisions regarding “Electric Cooperative Wildfire Mitigation Plan – Requirements” and specifies conditions that must be met to receive the benefits of the Rural Electric Cooperative Wildfire Liability Act. These conditions contemplate that an electric cooperative shall prepare a plan that includes the electric cooperatives’ size and a description and map of the cooperative’s service area and electric system within the service area; methods that the electric cooperative uses to assess wildfire risk within the cooperative’s service area; procedures and standards that the electric cooperative uses to perform vegetation management; the electric cooperative’s inspection and maintenance procedures for the electric cooperative’s electric system; the cooperative’s design and construction procedures and standards for the cooperative’s electric system; the cooperative’s situational awareness program, including weather monitoring and forecasting procedures; the cooperative’s wildfire emergency response procedures; the cooperative’s operational procedures during wildfire conditions, including red flag warning protocols and alternate recloser settings procedures; and the cooperative’s procedures to restore the cooperative’s electrical system in the event of a wildfire.

Section 3 specifies that a cooperative’s plan shall also include: a description of the cooperative’s awareness efforts regarding the cooperative’s wildfire mitigation efforts, including vegetation management and operational controls; confirmation that the cooperative’s plan and annual reports are made publicly available; a description of the plan’s mitigation measures, including modifications to facilities, and preventative programs that the cooperative is implementing to reduce the risk of cooperative equipment igniting a wildfire, including pole and right-of-way inspections; the factors that the cooperative considered to balance the components of the plan with the need to provide continuous electricity service to the cooperative’s service areas and the costs and feasibility; and the potential impact of the plan’s mitigation measures on public safety, first responders and health and communication

infrastructure.

Section 4, Paragraph A provides that a cooperative's plan shall be effective for five years upon the date of approval by the commission with the plan to be updated and resubmitted to the commission for approval at the end of each subsequent five-year period following the initial approval of the plan.

Paragraph B requires that a cooperative submit its plan for review and recommendations by the division prior to submitting the plan to the commission for approval.

Paragraph C states that a cooperative shall include the review and recommendations of its plan from the division in its submission of the plan to the commission; provided that if the cooperative has not received a response from the division within 45 days of submitting the plan for division review, the cooperative may then submit the plan to the commission without the division's review.

Paragraph D contemplates that the commission shall approve or reject a plan within 45 days of submission of the plan for commission review. When a plan has not been approved or rejected by the commission within the aforesaid timeframe, the plan is deemed approved as a matter of law. If a plan is rejected by the commission the commission shall issue a decision in writing detailing the specific reasons for the rejection. The cooperative shall then have 30 days to modify and resubmit the plan to the commission for approval.

Paragraph E requires that within 30 days of receiving approval of a plan, an electric cooperative shall post a non-confidential version of the plan that excludes elements that would compromise the security of its electric system on its website in a clearly identifiable and accessible manner.

Section 5 requires that on July 1, 2026 and on July 1 of each subsequent year, an electric cooperative shall post a report on the cooperative's plan on the cooperative's website in a clearly identifiable manner. The report shall include a description of the cooperative's compliance with the plan, modifications or updates that have been made to the plan and the plan's approval status pursuant to the Rural Electric Cooperatives Wildfire Liability Act.

Section 6, Paragraph A provides that in a civil action or claim made against a cooperative, upon providing proof that the cooperative's plan has been approved by the commission and that its annual reports adhere to the requirements set forth in Section 5 of this Act, or that the cooperative was denied the ability to comply with an approved plan by a federal agency, landowner, member of an electric cooperative, state or tribal government, the cooperative is: (1) presumed to have reasonably and prudently prepared for and mitigated the risk of wildfire for the cooperative's electrical system and operations; (2) exempt from liability for losses resulting from a wildfire; and (3) not liable for failure to implement a public safety power shutoff policy unless one is mandated by the commission.

Paragraph B provides that a plaintiff may recover economic losses or noneconomic losses from a cooperative as a result of a wildfire when the plaintiff demonstrates, by a showing of clear and convincing evidence, that an origin and cause investigation conducted by a national wildfire coordination group or wildland fire investigator certified pursuant to federal law has determined that: (1) the cause of the wildfire is a powerline or related in any way to the cooperative's equipment or operations; (2) the cooperative's conduct intentionally set the

wildfire or intentionally caused the wildfire to be set while knowing that to do so was wrong and that harm to others might be the result; and (3) the cooperative's conduct was the actual and proximate cause of the wildfire and loss to the plaintiff.

Section 7, Paragraph A provides that a claim against a cooperative for wildfire loss shall be filed in district court within 2 years after the date of the wildfire or it shall forever be barred.

Paragraph B provides that a plaintiff or estate thereof in a civil action against a cooperative for wildfire loss may recover economic loss and noneconomic loss to the extent that the noneconomic loss is due to death or bodily injury resulting from a burn. Claims for noneconomic loss resulting from a burn must be supported by competent medical evidence in the form of a written diagnosis from a medical provider that a burn is the result of a wildfire.

Paragraph C provides that state agencies or fire response agencies may recover their wildfire suppression costs in district court pursuant to the limitations on liability set forth in this Act.

Paragraph D provides that the total damages for any and all claims that can be awarded against a cooperative and its insurer, no matter the total number of claimants or suits or actions as result of a wildfire, shall not exceed 2 million dollars.

Section 8 provides that nothing in the Act shall limit the defenses that a cooperative may be entitled to raise in an action for damages caused by wildfire.

Section 9 amends Section 30-32-4, NMSA 1978, limiting the double damages penalty by providing an exception to electric cooperatives operating pursuant to a wildfire mitigation plan approved pursuant to the Rural Electric Cooperative Wildfire Liability Act.

Section 10 amends Section 37-1-4, NMSA 1978 by taking the Act proposed in SB 281 out from under the ordinarily applicable four-year statute of limitations governing torts, unwritten contracts, etc.

Section 11 provides the effective date for the proposed legislation as July 1, 2025.

FISCAL IMPLICATIONS

SB 281 would have an additional financial impact on the PRC for the following additional resources: 1 Utilities Division Engineer I position (\$128,553), 1/16 of Office of General Counsel attorney (\$9,433), 1/8 Legal attorney (\$18,216), 1/16 of a hearing examiner (\$11,302). For a total of annual cost to PRC of \$167,504 in FY26 and \$ \$177,555 in FY27.

SIGNIFICANT ISSUES

SB 281 appears to contemplate proceedings conducted by the NMPRC to review electric cooperative wildfire mitigation plans, which will likely require the dedication of Commission advocacy staff, advisory staff, and others to the process of reviewing and adjudicating to final conclusion the question of the plan's propriety in conformance with the Act. SB 281 gives the Commission 45 days in which to conduct its review of the plan culminating in approval or rejection of the same. SB 281 expects that in the event of rejection the Commission will provide a written decision detailing the specific reasons for rejection. In addition to the processual implications, the review of such plans suggests the need for Commission advocacy staff to

include expertise in wildfire mitigation in order to credibly assess electric cooperative wildfire mitigation plans submitted to the Commission pursuant to SB 281.

Further, SB 281 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, 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 SB 281 are myriad and potentially far-reaching.

PERFORMANCE IMPLICATIONS

Carrying out the aims and fulfilling the procedural requirements of SB 281, as they pertain to the Public Regulation Commission, will result in performance and resource costs to the Commission by reason of the 45-day review period and other processual realities as discussed above.

ADMINISTRATIVE IMPLICATIONS

Carrying out the aims and fulfilling the procedural requirements of SB 281, as they pertain to the Public Regulation Commission, will result in performance and resource costs to the Commission by reason of the 45-day review period and other processual realities as discussed above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

While there is other legislation relating to the subject of wildfires, e.g., HB 191 – Wildfire Suppression and Preparedness Funds; SB 33 – Wildfire Prepared Act, these other items do not purport to limit liability or enact the sort of tort and remedy reform contemplated by SB 281.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None.