

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date Feb 6, 2025
Bill No: SB281

Sponsor: Senator Pat Woods
Short Title: Rural Electric Cooperative Wildfire Liability Act

Agency Name and Code Number: Energy, Minerals and Natural Resources Department - 521
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
n/a	n/a	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
n/a	n/a	n/a	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		150	150	300	Recurring	GF

(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: SB281 creates the rural electric cooperative wildfire liability act requiring rural electric cooperatives to develop and submit wildfire mitigation plans for review by The Energy, Minerals and Natural Resources Department-Forestry Division (Division) and approval by the Public Regulation Commission. Further, SB281 establishes limits on liability for damage awards for claimants in the event a wildfire is caused as a result of an electric cooperative's equipment or operations, conduct of intentionally setting a wildfire, and that the cooperative's conduct was the actual or proximate cause of the wildfire. Total damage claims, no matter the total number claimants or suits, are not to exceed \$2,000,000.

FISCAL IMPLICATIONS

The Division does not have the staff for the review of the proposed plans. The Division would require 1 FTE for technical review and .5 FTE for legal review. This would require a budget of \$150,000 annually to implement.

SIGNIFICANT ISSUES

SB281 definition of "wildfire" is inconsistent with the Forest Conservation Act. For consistency, the definition currently in use for "wildfire" is based on the National Wildland Fire Coordinating Group glossary of terms: *a fire originating from an unplanned ignition, such as lightning, volcanoes, an unauthorized or accidental human-caused fire or a prescribed fire that is declared a wildfire.*

SB281 should clarify that the Forestry Division shall only review for the reasonableness of the electric cooperative's vegetation management plans and should expressly not be liable for any opinions.

Wildfire mitigation plan stipulations Section 3-A (3) should include standards of fuel mitigation from vegetation management, i.e., chipping, removal of all vegetative material, scattering fuel or vegetation, vegetation depth if scattering, piling and piling height etc. This will help determine whether fuel mitigation actions are adequate to reduce the fire threat from fuels or exacerbate the issue.

Section 3-A (6) would be improved to include guidance to electric cooperatives to access the national weather service website and fire weather outlook services for monitoring and forecasting weather and awareness. These may include spot weather forecasts that are available through requests to the national weather service.

Section 3-A (7) specifies the electric cooperative's wildfire emergency communication procedures to contact agencies, local governments, fire departments and other land managing agencies responsible for wildland fire suppression. SB281 should specify that this list include the emergency contact numbers and/or radio frequencies. This section should also include the appropriate points of contact for the electric cooperative during wildfire emergencies and

procedures for communication with that individual and communication procedures between that individual and all the wildfire response agencies. The plans should require electric cooperative representatives to participate in annual pre-wildland fire season coordination and communication meetings between local, state and federal agencies for resource coordination and pre-wildfire season communication and planning.

Section 3-A (8 -9) should clarify the electric cooperative's communication process with local, state and federal land managing agencies during red flag conditions. The section should also describe the process to trigger a decision for power shutoff, process and decision tree for resetting procedures and the process of communication to emergency responders when these decisions have been made to assure their safety and security.

The Forestry Division recommends that the electric cooperative plan review be conducted either in the winter (November-January) or early spring (February-April) to provide the Forestry Division with the ability to complete a timely review. The Division may be unable to review plans within 45 days during the forestry field season and at times when there are multiple active wildfires demanding staff time and attention.

Plans should be reviewed more often than 5 years as fire conditions can change on a seasonal basis including vegetation changes due to natural influences or installation of new powerlines and distribution centers.

SB281 limits total damage claims not to exceed \$2,000,000 for claimants. The costs for wildfire suppression can be significant depending on the extent of the wildfire and the length of time and resources needed to extinguish a wildfire. SB281 provisions of claims may not be sufficient to cover the costs to suppress a wildfire incurred by a state or multiple state agencies. Cost recovery also requires a state agency to file a suit in district court to reclaim incurred costs and SB281 provisions do not establish whether an agency may recoup legal fees and administrative costs associated with the suit claims process.

PERFORMANCE IMPLICATIONS

The timeframe for completing Division review may be limiting depending on the timing of plan submission for review, particularly during the months of April - September.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SM2 is a memorial to create a wildfire study group including electric cooperatives and investor owned utilities. SB281 will take action to address many of the topics raised for study in SM2.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

The goal of SB281 is to limit liability for the electric cooperatives. However, the State of New Mexico and the Division should not be limited in recovering taxpayer money spent suppressing fires that an electric cooperative may have negligently created. There may be Supremacy Clause issues as well.

Additionally, if the Division approves or reviews a plan for an electric cooperative, the Division may then be considered liable if the electric cooperative is found negligent in allowing a dangerous fire hazard to exist.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Not enacting this bill would reduce the likelihood that electric cooperatives develop and implement quality vegetation management plans for their service areas. The electric cooperatives would also lack an incentive to communicate and coordinate with wildfire response agencies. The wildfire liability to electric cooperatives could increase as a result.

AMENDMENTS