

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Wyoming energy independence-fire funds.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to public utilities; authorizing the
2 establishment of fire funds; specifying requirements for
3 fire funds; providing procedures and limitations for claims
4 against a public utility for damages caused by wildfires;
5 specifying applicability; requiring rulemaking; and
6 providing for effective dates.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 37-3-401 through 37-3-404 are created

11 to read:

12

1

ARTICLE 4

2

WYOMING FIRE FUNDS

3

4

37-3-401. Definitions.

5

6

(a) As used in this article:

7

8

(i) "Eligible payment" means an amount owed by a public utility to a person in the state that exceeds the public utility's applicable insurance coverage. "Eligible payment" includes amounts owed as a result of a settlement agreement resolving a fire claim or a final adjudicated fire claim that awards damages. "Eligible payment" does not include an amount for damages to infrastructure owned by a public utility caused by a fire event;

16

17

(ii) "Financial institution" means as defined by W.S. 13-1-401(a)(ii);

19

20

21

22

STAFF COMMENT

23

24

The definition of financial institution is included as an authorized entity in which a public utility may open an investment account to be designated as a Wyoming fire fund.

25

26

1 The text of the definition in W.S. 13-1-401(a)(ii) is
2 below:

3

4 (ii) "Financial institution" means any bank,
5 savings and loan association, trust company or credit union
6 having a place of business in Wyoming, whether chartered or
7 organized under the laws of Wyoming or the laws of the
8 United States. "Financial institution" includes a Wyoming
9 branch of an out-of-state bank resulting from an interstate
10 merger pursuant to article 8 of chapter 2 of this title.

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15 (iii) "Fire claim" means any claim, whether based
16 on negligence, nuisance, trespass or any other claim for
17 relief, brought against a public utility by any person who
18 is not and does not represent a governmental entity against
19 a public utility in any civil action to recover damages
20 resulting from a fire event;

21

22 (iv) "Fire event" means any unplanned or
23 uncontrolled fire in the state alleged to have been caused
24 by a public utility;

25

26 (v) "Wyoming fire fund" means a fund that may be
27 created under this article by a public utility to serve as
28 a resource to supplement other forms of insurance to make
29 eligible payments.

1

2 **37-3-402. Wyoming fire fund; establishment.**

3

4 (a) A public utility may create a Wyoming fire fund
5 upon applying to the commission for approval of the fire
6 fund in accordance with this section.

7

8 (b) The creation of a Wyoming fire fund under this
9 section shall not be construed to create an exclusive fund
10 for payment of eligible payments or to prohibit a public
11 utility from proposing, or the commission from approving,
12 other mechanisms for third-party liability coverage that
13 are in the public interest.

14

15 (c) A Wyoming fire fund created under this section
16 shall consist of:

17

18 (i) Monies collected from a reasonable and
19 prudent fire surcharge that a public utility may, upon
20 approval by the commission, charge to the public utility's
21 customers. Surcharges imposed under this paragraph shall be
22 collected over ten (10) years from the date of approval by
23 the commission;

1

2 (ii) Investment earnings from money in the
3 Wyoming fire fund;

4

5 (iii) Other amounts deposited into the fund as
6 otherwise required by law or rule of the commission;

7

8 (iv) Other funds of the public utility that the
9 public utility deposits into the Wyoming fire fund.

10

11 (d) The commission shall approve a public utility's
12 request to create a Wyoming fire fund if the public utility
13 demonstrates to the commission's satisfaction that:

14

15 (i) The fire fund is in the public interest;

16

17 (ii) The fire fund supports the financial health
18 of the public utility;

19

20 (iii) The fire fund will maintain or improve the
21 public utility's ability to deliver safe and reliable
22 services;

23

1 (iv) The public utility has established a
 2 wildland fire protection plan that has been approved by the
 3 public utility's governing body and that the public utility
 4 is in compliance with at the time the public utility
 5 requests to create a fire fund;

6

7 *****

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STAFF COMMENT

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11 The Committee may wish to consider whether another entity
 12 (for example, the Office of State Lands and Investments or
 13 the State Forester, who is within that office) should be
 14 required to approve the public utility's wildland fire
 15 protection plan. This is similar to the consideration
 16 raised in the staff comment on pages 15-16.

17

18 *****

19

20

21 (v) Any surcharge imposed under paragraph (c)(i)
 22 of this section does not result in an increase over current
 23 rates as follows:

24

25 (A) For all customers, more than four and
 26 ninety-five hundredths percent (4.95%);

27

1 (B) For an average residential customer,
2 more than three dollars and seventy cents (\$3.70) per
3 month.

4

5 (e) Notwithstanding any other provision of law, a
6 Wyoming fire fund created under this article shall not be
7 used for payments related to any fire claim or other
8 property damage claim originating or occurring outside the
9 state of Wyoming.

10

11 (f) A surcharge imposed under paragraph (c)(i) of this
12 section shall terminate upon the earliest of:

13

14 (i) Ten (10) years after the surcharge is first
15 assessed;

16

17 (ii) The date on which the assets in the public
18 utility's Wyoming fire fund reach an amount equal to fifty
19 percent (50%) of the public utility's revenue requirement,
20 as established in the public utility's most recently
21 approved general rate case;

22

1 *****
 2 *****
 3 STAFF COMMENT
 4

5 The term "revenue requirement" is used in the paragraph
 6 above and elsewhere in this portion of the bill draft. The
 7 Committee may wish to consider whether "revenue
 8 requirement" should be defined or if there is another term
 9 used in Wyoming that would fit better.

10 *****
 11 *****
 12 *****
 13

14 (iii) The date on which the commission determines
 15 that the surcharge should terminate, regardless of the
 16 balance of the public utility's Wyoming fire fund.

17
 18 **37-3-403. Wyoming fire fund; administration; duties;**
 19 **disbursement of funds.**

20
 21 (a) Upon the creation of a Wyoming fire fund under
 22 this article, a public utility shall:

23
 24 (i) Open a separate investment account at a
 25 financial institution that is designated as a Wyoming fire
 26 fund. The account shall hold all assets and funds specified
 27 in W.S. 37-3-402(c). The public utility shall designate
 28 appropriate representatives as authorized by the utility's
 29 board of directors as the account signatories and shall

1 notify the commission of the designation of the account
2 signatories;

3

4 (ii) Invest Wyoming fire fund assets collected
5 under W.S. 37-3-402(c) in accordance with the Wyoming
6 Uniform Prudent Investor Act. All earnings from the account
7 shall be deposited into the account and shall not be
8 allocated, distributed or deposited to any other account or
9 fund of the public utility;

10

11 (iii) Record all customer funds received into the
12 public utility's Wyoming fire fund account in a separate
13 ledger account that reflects deposits, disbursements,
14 assets, liabilities, equity, income and expenditures
15 related to the fund;

16

17 (iv) Report all Wyoming fire fund activity,
18 including investment statements and ledger account
19 reconciliations, to the commission not less than one (1)
20 time per year, unless otherwise directed by rule or order
21 of the commission;

22

1 (v) Identify the Wyoming fire fund investment
2 account as restricted in the public utility's financial
3 statements, with an offsetting regulatory liability owed
4 back to the utility's customers if the funds in the Wyoming
5 fire fund are not fully utilized;

6

7 (vi) Maintain records of the assets, liabilities,
8 equity, income and expenditures of the public utility's
9 Wyoming fire fund.

10

11 (b) For all fire claims arising out of fire events
12 that occurred in a calendar year, a public utility shall
13 not withdraw or receive disbursement of funds from a
14 Wyoming fire fund until the public utility has paid not
15 less than ten million dollars (\$10,000,000.00) towards
16 eligible payments from the public utility's own funds that
17 are not included in its regulated revenue requirement.

18

19 (c) Subject to subsection (b) of this section, a
20 public utility may disburse funds from the public utility's
21 Wyoming fire fund to pay eligible payments.

22

1 (d) Any person may challenge the amount of the
2 disbursement from a public utility's Wyoming fire fund used
3 for the settlement of a fire claim. For any challenge under
4 this subsection, the person submitting the challenge shall
5 demonstrate that the disbursement was imprudent. The
6 commission may require that the public utility replenish
7 the utility's Wyoming fire fund for any amount that the
8 commission determines was imprudently disbursed. For
9 purposes of this subsection, the use of a Wyoming fire fund
10 to pay a judgment relating to a fire claim shall be deemed
11 prudent and not subject to a challenge under this
12 subsection.

13

14 (e) If the commission orders or otherwise requires a
15 public utility to reimburse a Wyoming fire fund due to
16 imprudence under subsection (d) of this section, the public
17 utility's total reimbursement obligation shall not exceed
18 ten percent (10%) of the public utility's distribution
19 equity rate base assigned to this state for the calendar
20 year in which the calculation is performed.

21

22 **37-3-404. Fire claims; recovery; requirements.**

23

1 (a) Any person may bring a fire claim against a public
2 utility under this article not later than two (2) years
3 after the date of the ignition of the fire.

4

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6 *****

7 STAFF COMMENT

8

9 The Committee may wish to consider whether to also include
10 language that allows for a fire claim within two years of
11 the discovery of any fire damage. See W.S. 1-3-106 (stating
12 that a cause of action for the wrongful taking of property
13 doesn't accrue until the wrongdoer is discovered); W.S. 1-
14 3-107(a) (stating that a cause of action for an error or
15 omission in the provision of healthcare services must be
16 brought within, among other times, two years after the
17 discovery of the alleged act if the act wasn't reasonably
18 discoverable within a two-year period).

19

20 *****

21 *****

22

23 (b) Subject to the limitations of this section, a
24 person may recover for a fire claim:

25

26 (i) Economic losses to compensate for damage to
27 property; and

28

29 (ii) Noneconomic losses to compensate for pain,
30 suffering and inconvenience.

31

1 (c) Subject to subsection (f) of this section, the
2 amount of damages recoverable for economic losses under
3 subsection (b) of this section shall be the lesser of:

4

5 (i) The cost to restore the property to the
6 property's pre-fire condition; or

7

8 (ii) The difference between the fair market value
9 of the property immediately before the fire and the fair
10 market value of the property after the fire.

11

12 (d) Subject to subsection (f) of this section and
13 excluding wrongful death actions, the amount of damages
14 recoverable for noneconomic losses under subsection (b) of
15 this section shall not exceed one hundred thousand dollars
16 (\$100,000.00) for a person who is not physically injured as
17 a result of the fire.

18

19 (e) Beginning on July 1, 2026 and on July 1 of each
20 year thereafter, the commission shall adjust the
21 limitations on recoverable damages specified in subsection
22 (d) of this section by the annual rate of inflation in this
23 state for the preceding twelve (12) month period as

1 calculated by the department of administration and
2 information. Not later than July 15, 2026 and July 15 of
3 each year thereafter, the commission shall:

4

5 (i) Certify the inflation-adjusted limitation
6 amounts for subsection (d) of this section calculated under
7 this subsection;

8

9 (ii) Report to the Wyoming supreme court of the
10 inflation-adjusted limitation amounts for subsection (d) of
11 this section.

12

13 (f) The limitations on damages specified in
14 subsections (c) and (d) of this section shall not apply if:

15

16 (i) The public utility did not have a wildland
17 fire protection plan approved by the public utility's
18 governing body in place before the occurrence of the fire
19 event; or

20

21 (ii) The commission determines, in a proceeding
22 requested under subsection (g) of this section, that the
23 public utility was in material noncompliance with the

1 public utility's wildland fire protection plan in the area
2 of the fire event at the time the fire event occurred.

3

4 (g) Not later than one hundred eighty (180) days after
5 a fire event occurs, any person may request a contested
6 case hearing before the commission to determine whether a
7 public utility was in material noncompliance with the
8 public utility's wildland fire protection plan in the area
9 of a specific fire event. The commission's determination
10 for an action brought under this subsection shall be
11 binding on all fire claims arising out of the specific fire
12 event. Unless the commission determines that additional
13 time is necessary to analyze a request brought under this
14 subsection and is in the public interest, the commission
15 shall make a determination on noncompliance not later than
16 one hundred twenty (120) days after a person requests a
17 hearing under this subsection.

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21 STAFF COMMENT

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23 Subsection (g) above requires a person to bring a challenge
24 to the Public Service Commission within 180 days of a fire
25 event if the person believes that the public utility was
26 not in material compliance with the utility's wildfire

1 protection plan. The Committee may wish to consider the
2 following as it pertains to that subsection:

- 3
- 4 1. Whether the Commission has the necessary expertise to
- 5 make a compliance determination (as drafted, the
- 6 Commission—or any other state agency or entity—would
- 7 not have occasion to review or approve a fire
- 8 protection plan before this review).
- 9 2. The 180-day filing limit vis-à-vis the two-year
- 10 statute of limitations for bringing a fire claim
- 11 against a public utility.
- 12 3. The legal effect of the Commission's compliance
- 13 determination (particularly if a person brings a fire
- 14 claim against a public utility at a later point).

15
 16 *****
 17 *****
 18

19 **Section 2.** Nothing in this act shall be construed to
 20 impair or alter any agreement, contract or obligation
 21 entered into before the effective date of this section.

22

23 **Section 3.** The public service commission shall
 24 promulgate all rules necessary to implement this act.

25

26 **Section 4.**

27

28 (a) Except as provided in subsection (b) of this
 29 section, this act is effective July 1, 2025.

30

1 (b) Sections 3 and 4 of this act are effective
2 immediately upon completion of all acts necessary for a
3 bill to become law as provided by Article 4, Section 8 of
4 the Wyoming Constitution.

5

6

(END)