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INTRODUCTION

HOUSE BILL NO. [BILL NUMBER]

Electric Utilities Wildfire Mitigation Plans and Liability.

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

A BILL

for

1 AN ACT relating to Electric Utilities;
2 establishing a process by which Electric Utilities
3 may submit Wildfire Mitigation Plans to the Public Service
4 Commission for approval; and specifying limits for
5 liability and damages for Electric Utilities related
6 to wildfires.

10

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

12

1 *****

2 *****

3 STAFF COMMENT

4
5 Please note that this draft has not gone through the normal
6 LSO review process and may be subject to further changes
7 and suggestions/comments.
8

9 *****

10 *****

11

12 Section 1. 37-3-401 through 37-3-405 are created to
13 read:

14

15 ARTICLE 4

16 WILDFIRE MITIGATION

17

18 37-3-401. Definitions.

19

20 (a) As used in this article:

21

22 (i) "Economic Loss" means the pecuniary loss
23 resulting from medical expenses, business
24 interruption or business
25 income, property damage loss,
26 replacement services loss, loss of use, loss due to death,
27 and burial costs to the extent recovery for the loss is
28 otherwise allowed under the laws of Wyoming;

1 *****
2 *****

3 STAFF COMMENT

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5 The Committee may wish to consider whether the definition
6 of "economic loss" above—which includes references to "loss
7 due to death"—implicates Article 10, Section 4(a) of the
8 Wyoming Constitution, which provides that no law "shall be
9 enacted limiting the amount of damages to be recovered for
10 causing the injury or death of any person."

11
12 Wyoming law for crime-victim compensation uses the
13 following definition for "economic loss" (W.S. 1-40-
14 102(a)(v)):

15
16 (v) "Economic loss" means and includes medical
17 and hospital expenses, loss of earnings, loss of future
18 earnings resulting from the injury, funeral and burial
19 expenses and loss of support to the dependents of the
20 victim to include home maintenance and child care;

21
22 *****
23 *****

24
25 (ii) "Electric Utility" means any person,
26 including cooperative electric utilities as defined by W.S.
27 37-1-101(a)(vi)(C), that is authorized to engage in
28 business in Wyoming and that is primarily engaged in the
29 generation, transmission, or sale of electric energy.

30 "Electric Utility" shall not include any Electric Utility
31 owned or operated by a city or town;

32 (iii) "Wildfire Mitigation Plan" means a plan
33 submitted to and approved by the Commission.

34 (iv) "Wildfire" means an unplanned, unwanted fire
35

burning in any area, that may impact, damage, or
cause harm to any area, including but not limited
to, natural resources, agricultural resources,
homes and property, and threaten lives and safety
within the state of Wyoming.

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3 *****

4 **STAFF COMMENT**

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6 For the definition of "wildfire mitigation plan," the
7 Committee may wish to consider whether a reference to an
8 "approved" plan should be included given the discretion
9 that utilities have in applying for approval of the plan.

10

11 *****

12 *****

13

14 **37-3-402. Wildfire Mitigation Plans; Commission**
15 **authority.**

16

17 The Commission may promulgate rules to implement this
18 article, including rules establishing procedures and
19 requirements for the filing, review, and approval of
20 Wildfire Mitigation Plans and any other rules that the
21 Commission determines are necessary to protect the public
22 interest.

23

24 **37-3-403. Electric Utilities; Wildfire Mitigation**
25 **Plans; contents.**

26

27 (a) Each Electric Utility may prepare a Wildfire
28 Mitigation Plan that shall include, at a minimum:

1

2 (i) A description of the Electric Utility's
3 service territory and the areas within the service
4 territory or rights of way that may be subject to a
heightened risk of wildfire;

6 (ii) A description of the procedures, standards,
7 and schedules that the Electric Utility will use to inspect
8 and operate its transmission and distribution
9 infrastructure, if any;

11 (iii) A description of the procedures and
12 standards that the Electric Utility will use to perform
13 vegetation management;

15 (iv) A description of proposed modifications,
16 Replacements, and upgrades to facilities and preventative
17 programs that the Electric Utility will implement to reduce
18 the risk of its electric facilities initiating a wildfire;

20 (v) A description of how the Electric Utility's
21 wildfire mitigation strategies and policies have changed
22 since the later of the immediately preceding five (5)
23 years;

4 (vi) A description of how the Electric Utility
5 will coordinate with other Electric Utilities regarding any
6 shared facilities;

8 (vii) A description of procedures for de-
9 energizing power lines and disabling reclosers to mitigate
10 potential wildfires, including:

11
12 (A) The ability of the Electric Utility to
13 reasonably access the proposed power line to be de-
14 energized;

15
16 (B) Balancing the risk of wildfire with the
17 need for the continued supply of electricity to a
18 community;

19

20 *****

21 *****

22 **STAFF COMMENT**

23

24 **The terms "fire" and wildfire" appear to be used**
25 **interchangeably in this bill draft. The Committee may wish**
26 **to consider whether those terms should be aligned (i.e.,**

1 use only "fire" or "wildfire") or if those terms should be
2 defined for clarity.

3
4 *****
5 *****
6

7 (C) Any potential impact that de-energizing
8 lines may have on the resilience of the remainder of the
9 Electric Utility's transmission and distribution
10 facilities, if any;

11
12 (D) The need to provide notice to customers
13 and the public before, where possible, or soon after de-
14 energization;

15
16 (E) Any need to communicate and coordinate
17 with any other Electric Utilities that may be impacted by a
18 de-energization and any plans to accomplish communications,
19 including communications with transmission operators,
20 reliability coordinators and cooperative member systems;

21
22 (F) Any potential impact to public safety.

23

1 (viii) A description of the procedures the
2 Electric Utility intends to use to restore its electrical
3 system in the event of a wildfire;

4
5 (ix) For Electric Utilities whose rates are
6 regulated by the Commission, a description of the estimated
7 incremental costs and potential associated rate impacts for
8 the implementation of the Wildfire Mitigation Plan,
9 including system improvements and upgrades;

10
11 (x) A description of community outreach and
12 public awareness efforts before and during the wildfire
13 season, particularly in areas impacted by wildfires or de-
14 energizations;

15
16 (xi) A description of potential participation
17 with emergency coordinators, if applicable.

18
19 **37-3-404. Wildfire Mitigation Plans; Commission**
20 **approval.**

21
22 (a) An Electric Utility may apply to the Commission
23 for approval of a Wildfire Mitigation Plan.

1

2 (b) Upon receiving an application for approval of a
3 Wildfire Mitigation Plan, the Commission shall approve the
4 plan if the Wildfire Mitigation Plan is reasonable, in the
5 public interest, and appropriately balances the costs of
6 implementing the Wildfire Mitigation Plan with the risks of a
7 potential wildfire.

8

9

For Electric Utilities whose rates are
regulated by the Commission, approval of a
Wildfire Mitigation Plan does not confer to the
Electric

10 Utility the right to recover the costs associated with
the Wildfire Mitigation Plan. A rate-regulated Electric Utility
may seek, and the Commission may authorize cost recovery for,
the costs associated with implementing a Wildfire Mitigation
Plan through rate cases or other separate filings.

15

16 (c) If an Electric Utility submits a Wildfire
17 Mitigation Plan that is approved by the Commission,
the Electric Utility shall submit subsequent or
updated plans to the Commission no later than every
fifth year or as ordered by the Commission.

4 (d) Not later than June 1 in each year following any
5 year in which the Commission approves a Wildfire Mitigation
6 Plan under this section, an Electric Utility shall file
7 an annual report with the Commission detailing the
8 Electric Utility's compliance with the Commission-
9 approved Wildfire Mitigation Plan. Within 60 days of
10 receiving each annual report, the Commission may initiate a
11 proceeding to evaluate whether the Electric Utility is in
12 substantial compliance with its Commission-approved Wildfire
13 Mitigation Plan. If the Commission takes no action within 60
14 days, the Electric Utility is presumed to be in substantial
15 compliance with its Commission-approved Wildfire Mitigation

16 Plan.

11

12 **37-3-405. Wildfire Mitigation Plans; limitations of**
13 **liability and damages for Electric Utilities.**

14

15 (a) Except as otherwise provided in this section, for
16 Commission-approved Wildfire Mitigation Plans, there shall
17 be a presumption in any civil action that the
18 Commission-approved Wildfire Mitigation Plan is a
19 reasonable and prudent preparation for, and mitigation of,
20 wildfire risk.

22

1 (b) A plaintiff may recover Economic Loss from an
2 Electric Utility as a result of a wildfire only if
3 the plaintiff shows one (1) or more of the
4 following by a preponderance of the evidence:

5

6 (i) The Electric Utility failed to substantially
7 comply with a Commission- approved Wildfire
8 Mitigation Plan, and that failure was the actual and
9 proximate cause of the damages to the plaintiff. For
10 purposes of this paragraph, an Electric Utility shall be
11 deemed to have substantially complied with the Wildfire
12 Mitigation Plan if the Electric Utility attempted in good
13 faith to comply with the plan but was denied or delayed
14 access to a right- of-way after the Electric Utility
15 requested access to the right-of-way to perform
16 vegetation management or fire mitigation work in accordance
17 with the plan;

19

20 (ii) The Electric Utility acted with malice or
21 criminal intent, and the Electric Utility's action was the
22 actual and proximate cause of the damages to the plaintiff.

23

1 (c) The following shall apply in any civil action that
2 a plaintiff brings against an Electric Utility for damages
3 caused by wildfire:

4

5 (i) An action against an Electric Utility
6 for damages caused by wildfire shall only be
7 brought within four (4) years after the date of the
8
9 ignition of the wildfire;
10

11 (ii) A plaintiff may recover Economic Losses;
12

13 (iii) No plaintiff shall recover noneconomic
14 losses unless the plaintiff suffered bodily injury from a
15 wildfire;

16 (iv) For the purposes of calculating
17 damages, the value of real or personal
18 property, including any vegetation on real
19 property, shall be the lesser of:
20

21 (A) The costs to restore the property to the
22 property's pre-wildfire condition ; or

1 (B) The difference between the productive
2 value of the property immediately before the wildfire and
3 the productive value of the property immediately after the
4 wildfire.

4

5 (v) Nothing in this section shall be construed to
6 limit any defenses that an Electric Utility may be entitled
7 to raise in a civil action for damages caused by wildfire.

8

9 **Section 2.** The Public Service Commission shall
10 promulgate any rules necessary to implement this act.

11

12 **Section 3.**

13

14 (a) Except as provided in subsection (b) of this
15 section, this act is effective immediately upon completion
16 of all acts necessary for a bill to become law as provided
17 by Article 4, Section 8 of the Wyoming Constitution.

18

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20

21

(END)