

By: King

H.B. No. 145

A BILL TO BE ENTITLED

AN ACT

1
2 relating to risk mitigation planning and associated liability for
3 providers of electric service; providing an administrative
4 penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 36.064, Utilities Code, is amended by
7 amending Subsections (a) and (b) and adding Subsections (c-1) and
8 (h) to read as follows:

9 (a) An electric utility may self-insure all or part of:

10 (1) the utility's potential liability or catastrophic
11 property loss, including windstorm, fire, wildfire, and explosion
12 losses, that could not have been reasonably anticipated and
13 included under operating and maintenance expenses; and

14 (2) potential damages the utility may be liable for
15 resulting from personal injury or property damage caused by a
16 wildfire.

17 (b) The commission shall approve a self-insurance plan
18 under this section if the commission finds [~~that~~]:

19 (1) the coverage is in the public interest;

20 (2) one of the following:

21 (A) the plan, considering all costs, is a lower
22 cost alternative to purchasing commercial insurance;

23 (B) commercial insurance alone is insufficient
24 to cover potential liability, damages, or catastrophic property

1 loss; or

2 (C) the electric utility cannot obtain
3 commercial insurance for a reasonable premium; and

4 (3) ratepayers will receive the benefits of the
5 savings.

6 (c-1) In approving a self-insurance plan under this
7 section, the commission shall prioritize the consideration of the
8 presence and potential extent of wildfire losses, including:

9 (1) historical data;

10 (2) actuarial studies and analyses; and

11 (3) the possibility of the electric utility's exposure
12 to losses from multiple types of disasters occurring within the
13 utility's service territory.

14 (h) Subsection (a)(2) does not authorize an electric
15 utility to self-insure under this section for damages from a
16 wildfire event the utility caused intentionally, recklessly, or
17 with gross negligence.

18 SECTION 2. Subchapter D, Chapter 38, Utilities Code, is
19 amended by adding Sections 38.080 and 38.081 to read as follows:

20 Sec. 38.080. WILDFIRE MITIGATION PLAN. (a) In this
21 section:

22 (1) "Division" means the Texas Division of Emergency
23 Management.

24 (2) "First responder" has the meaning assigned by
25 Section 418.251, Government Code.

26 (3) "Plan" means a wildfire mitigation plan described
27 by Subsection (b).

1 (4) "Wildfire risk area" means an area determined by
2 the division or an electric utility, electric cooperative, or
3 municipally owned utility to be at an elevated risk for wildfire.

4 (b) An electric utility or an electric cooperative that owns
5 a transmission or distribution facility in a wildfire risk area
6 shall file, and a municipally owned utility or an electric utility
7 that is a river authority may file, with the commission a wildfire
8 mitigation plan that includes the following:

9 (1) a description of each area to which the utility or
10 cooperative provides transmission or distribution service that is
11 in a wildfire risk area and the utility's or cooperative's process
12 for periodically inspecting the utility's or cooperative's
13 transmission and distribution facilities in those areas;

14 (2) a detailed plan for vegetation management in the
15 wildfire risk area;

16 (3) a detailed operations plan for reducing the
17 likelihood of wildfire ignition from the utility's or cooperative's
18 facilities and for responding to a wildfire;

19 (4) a description of the procedures the utility or
20 cooperative intends to use to restore the utility's or
21 cooperative's system during and after a wildfire event, including
22 contact information for the utility or cooperative that may be used
23 for coordination with the division and first responders;

24 (5) the utility's or cooperative's community outreach
25 and public awareness plan regarding wildfire risks and actual
26 wildfires affecting the utility's or cooperative's service
27 territory or system, including a specific communications plan for

1 responding to a wildfire event;

2 (6) any infrastructure report, maintenance report, or
3 distribution pole maintenance plan required by the commission;

4 (7) an analysis of the wildfire mitigation plan
5 prepared by an independent expert in fire risk mitigation; and

6 (8) any other information the commission may require.

7 (c) The commission shall issue an order not later than the
8 180th day after a plan is filed with the commission that:

9 (1) approves the plan if the commission finds that
10 approval is in the public interest; or

11 (2) modifies or rejects the plan as necessary to be
12 consistent with the public interest.

13 (d) An electric utility or electric cooperative that does
14 not implement a plan approved under this section is subject to an
15 administrative penalty as provided by Chapter 15. This subsection
16 does not apply to an electric utility that is a river authority.

17 Sec. 38.081. LIABILITY FOR DAMAGES CAUSED BY WILDFIRE. (a)
18 An electric utility, municipally owned utility, or electric
19 cooperative that submits and obtains commission approval for a
20 wildfire mitigation plan under Section 38.080 is not liable for
21 damages resulting from a wildfire ignited or propagated by the
22 utility's or cooperative's facility unless a trier of fact in a
23 civil action finds that the utility or cooperative intentionally,
24 recklessly, or negligently caused the damage.

25 (b) It is an affirmative defense to liability in an action
26 brought against an electric utility, municipally owned utility, or
27 electric cooperative for damages resulting from a wildfire ignited

1 or propagated by the utility's or cooperative's facility that the
2 utility or cooperative was in compliance with relevant measures of
3 the utility's or cooperative's wildfire mitigation plan approved
4 under Section 38.080 with respect to the specific equipment alleged
5 to have ignited or propagated the wildfire that caused the damages.

6 (c) Notwithstanding Subsection (a) or (b), in an action
7 brought against an electric utility, municipally owned utility, or
8 electric cooperative for damages resulting from a wildfire ignited
9 or propagated by the utility's or cooperative's facility, a trier of
10 fact may consider relevant factors contributing to the wildfire
11 ignition or propagation to the extent the utility's or
12 cooperative's wildfire mitigation plan approved by the commission
13 under Section 38.080 departed from nationally accepted safety
14 standards, including the National Electrical Safety Code as
15 published by the Institute of Electrical and Electronics Engineers,
16 in effect at the time the plan was approved.

17 (d) Subsections (a) and (b) do not apply to an electric
18 utility, municipally owned utility, or electric cooperative that:

19 (1) does not file a wildfire mitigation plan under
20 Section 38.080; or

21 (2) files a plan that is rejected by the commission.

22 (e) Notwithstanding any other provision of this section,
23 this section does not affect an express contractual right of a
24 person or entity involving a communications facility or the shared
25 use of an electric facility or pole attachment.

26 SECTION 3. (a) The Public Utility Commission of Texas
27 shall adopt any rules necessary to implement Section 36.064,

1 Utilities Code, as amended by this Act, and Section 38.080,
2 Utilities Code, as added by this Act, not later than the 180th day
3 after the effective date of this Act.

4 (b) An electric utility, municipally owned utility, or
5 electric cooperative may file a wildfire mitigation plan, as
6 authorized by Section 38.080, Utilities Code, as added by this Act,
7 at any time after the effective date of this Act, regardless of
8 whether the Public Utility Commission of Texas has adopted any
9 rules described by Subsection (a) of this section before the date of
10 the filing.

11 SECTION 4. Section 38.081, Utilities Code, as added by this
12 Act, applies only to a cause of action that accrues on or after the
13 effective date of this Act.

14 SECTION 5. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2025.