

By: King

H.B. No. 3402

A BILL TO BE ENTITLED

AN ACT

relating to risk mitigation planning and associated liability for providers of electric service.

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

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

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

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

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

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

(1) the coverage is in the public interest;

(2) one of the following:

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

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

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

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

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

8           (1) historical data;

9           (2) actuarial studies and analyses; and

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

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

17           SECTION 2. Subchapter D, Chapter 38, Utilities Code, is  
18 amended by adding Section 38.080 to read as follows:

19           Sec. 38.080. WILDFIRE MITIGATION PLAN; AFFIRMATIVE  
20 DEFENSE. (a) In this section:

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

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

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

27           (4) "Wildfire risk area" means an area determined by

1 the division or an affected electric utility, electric cooperative,  
2 or municipally owned utility, to be at an elevated risk for  
3 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 also a river authority may file, with the commission a  
8 wildfire 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; and

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

3 (c) The commission shall issue an order not later than the  
4 60th day after a plan is filed with the commission that:

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

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

9 (d) Subject to Subsection (e), an electric utility,  
10 municipally owned utility, or electric cooperative for which the  
11 commission has approved a plan is not liable for damages resulting  
12 from a wildfire ignited or propagated by the utility's or  
13 cooperative's facilities or actions unless a court of competent  
14 jurisdiction finds that the utility or cooperative intentionally,  
15 recklessly, or with negligence caused the damage.

16 (e) It is an affirmative defense to liability in a civil  
17 action brought against an electric utility, municipally owned  
18 utility, or electric cooperative for personal injury or property  
19 damages caused by a wildfire ignited or propagated by the utility's  
20 or cooperative's facilities if a court of competent jurisdiction  
21 finds that the utility or cooperative was in material compliance  
22 with relevant measures of its approved plan under this section.

23 SECTION 3. (a) The Public Utility Commission of Texas shall  
24 adopt any rules as necessary to implement Sections 36.064,  
25 Utilities Code, as amended by this Act, and Section 38.080,  
26 Utilities Code, as added by this Act, not later than the 180th day  
27 after the effective date of this Act.

1           (b) An electric utility, municipally owned utility or  
2 electric cooperative may file a wildfire mitigation plan, as  
3 authorized by Section 38.080, Utilities Code, as added by this Act  
4 at any time after the effective date of this Act, regardless of  
5 whether the Public Utility Commission of Texas has adopted any  
6 rules described by Subsection (a) before the date of the filing;  
7 provided, however, that such a plan is still subject to review,  
8 modification, approval, or rejection under Section 38.080(c),  
9 Utilities Code, as added by this Act.

10           SECTION 4. Section 38.080, Utilities Code, as added by this  
11 Act, applies only to a cause of action that accrues on or after the  
12 effective date of this Act.

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