

1 HOUSE BILL NO. 490

2 INTRODUCED BY A. REGIER, G. OBLANDER, K. ZOLNIKOV, T. FRANCE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO WILDFIRES AND
5 UTILITIES; ALLOWING CERTAIN ENTITIES TO SUBMIT AN APPROVED WILDFIRE MITIGATION PLAN;
6 PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR THE WILDFIRE MITIGATION PLAN;
7 PROVIDING FOR APPROVAL OF THE WILDFIRE MITIGATION PLAN; REQUIRING UPDATED REPORTS
8 RELATING TO THE WILDFIRE MITIGATION PLAN; PROVIDING THAT CERTAIN ENTITIES THAT HAVE
9 FILED A WILDFIRE MITIGATION PLAN ARE NOT CIVILLY LIABLE FOR INJURY OR DAMAGES CAUSED
10 BY WILDFIRE; REVISING THE STANDARD OF CARE RELATING TO CERTAIN ENTITIES AND WILDFIRE;
11 PROVIDING RULEMAKING AUTHORITY TO THE PUBLIC SERVICE COMMISSION RELATING TO
12 WILDFIRE MITIGATION PLANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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14 WHEREAS, the Legislature finds that electric facilities providers of Montana have an obligation to serve
15 customers and extend services, which is different from typical businesses, and that they provide a necessary
16 and beneficial public service for the supply, transmission, and delivery of electricity to the people of Montana as
17 well as a fundamental basis of economic growth and development of all sectors of Montana's economy; and

18 WHEREAS, there is a growing threat of wildfires in the United States and within the state of Montana;
19 and

20 WHEREAS, in recognition of electric facilities providers' obligation to serve their customers and in order
21 to secure and sustain Montana's reliable provision of electricity and services associated with it at just and
22 reasonable rates, electric facilities providers must be encouraged and have the right to deliver and transmit
23 electricity throughout the state without fear or risk of being held strictly liable for wildfire losses under the
24 common law theory of ultrahazardous activity or being held liable for wildfires caused by factors beyond their
25 control; and

26 THEREFORE, the intent of the Legislature to protect electric facilities providers from strict liability and
27 uncertain common law standards of care in the event of an unintentionally or negligently caused wildfire and to
28 provide a standard of care for electric facilities providers that choose to affirmatively undertake wildfire

1 mitigation efforts.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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5 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions
6 apply:

7 (1) "Commission" has the same meaning as provided in 69-1-101.

8 (2) "Electric cooperative" means a cooperative organized under Title 35, chapter 18, or a similar
9 state law for providing electricity to the public in Montana.

10 (3) "Electric facilities" means any equipment used for the transmission or distribution of electricity
11 to the public, including but not limited to generation and energy storage resources, substations, switchyards,
12 poles, towers, transformers, conductors, and relaying, sectionalizing, and protective equipment, such as
13 arrestors.

14 (4) "Electric facilities provider" means a regulated utility or electric cooperative, as well as a
15 municipally owned utility or entity, owning electric facilities in the state without regard to the jurisdiction of the
16 commission, which engages in electric transmission and distribution activities as defined in this section.

17 (5) "Electric transmission and distribution activities" means a condition, activity, or facility directly
18 related to the conveyance and distribution of electrical energy to a person, facility, transmission, or distribution
19 system in the state.

20 (6) "Regulated utility" means a public electric utility regulated by the commission under Title 69,
21 chapter 3.

22 (7) "Wildfire" has the same meaning as "forest or range fire" as defined in 50-63-104 and, for the
23 purposes of [sections 1 through 3], a fire ignited by electric facilities or activities associated with electric
24 transmission and distribution activities, regardless of whether the fire's ignition occurs within an incorporated
25 municipality.

26 (8) "Wildfire mitigation plan" means an electric facilities provider's written plan, including any
27 related components, that identifies risks associated with wildfire and strategies to mitigate or reduce those risks.

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1 NEW SECTION. **Section 2. Electric facilities provider -- wildfire -- wildfire mitigation plan**

2 **approval.** (1) An electric facilities provider may prepare a wildfire mitigation plan in accordance with this
3 section.

4 (2) A wildfire mitigation plan must include a description of:

5 (a) areas in which the electric facilities provider has electric facilities or electric transmission and
6 distribution activities that may be subject to a heightened risk of wildfire;

7 (b) the strategies and programs that the electric facilities provider will use to inspect and operate
8 its electric facilities;

9 (c) the strategies and programs that the electric facilities provider will use to perform vegetation
10 management;

11 (d) the strategies for modifications or upgrades to electric facilities and preventative programs that
12 the electric facilities provider may employ to reduce the risk of its electric facilities igniting a wildfire;

13 (e) the strategies and methods for de-energizing power lines and modifying electric facility
14 operations to mitigate potential wildfires taking into consideration the ability of the electric facilities provider to
15 reasonably access the proposed electric facility to be de-energized, the balance of the risk of wildfire with the
16 need for continued supply of electricity to a community, and any potential impact to public safety, first
17 responders, and health and communications infrastructure;

18 (f) the methods the electric facilities provider intends to use to restore its electrical system in the
19 event systems are de-energized for the prevention of a wildfire;

20 (g) the estimated incremental costs associated with implementing the plan, including system
21 improvements and upgrades for a regulated utility;

22 (h) community outreach and public awareness efforts before and during a wildfire season; and

23 (i) potential participation, if applicable, with state or local wildland fire protection plans or wildfire
24 mitigation plans.

25 (3) An electric cooperative must present incremental costs associated with implementing a wildfire
26 mitigation plan to its board of trustees for consideration when reviewing the plan; however, those costs may not
27 be a part of the wildfire mitigation plan itself.

28 (4) For the purposes of [sections 1 through 3], the commission for a regulated utility, the board of

1 trustees for an electric cooperative, or the governing body of any other type of electric facilities provider must:

2 (a) initially review an electric facilities provider's wildfire mitigation plan; and

3 (b) consider any input from a federal, tribal, state, or local entity, or other interested persons during
4 a public comment period not to exceed 45 days.

5 (5) After a public meeting and no more than 60 days after the close of public comment, the
6 commission for a regulated utility shall identify any deficiencies in a wildfire mitigation plan and provide written
7 comments addressing whether the wildfire mitigation plan is reasonable, is in the public interest, and
8 reasonably balances the incremental costs of implementing the plan with the risk of a potential wildfire.

9 (6) If an electric facilities provider prepares a wildfire mitigation plan in accordance with this
10 section, the electric facilities provider shall submit to its governing body a biennial report summarizing the
11 electric facilities provider's wildfire mitigation efforts and compliance with the wildfire mitigation plan.

12 (7) In accordance with the Montana Administrative Procedure Act, the commission may make any
13 necessary rules establishing procedures for the review and comment on a regulated utility's wildfire mitigation
14 plan, including for the appointment of a technical master to determine whether the wildfire mitigation plan
15 contains the required components in subsection (2).

16

17 **NEW SECTION. Section 3. Electric facilities provider -- wildfire -- cause of action -- standard of**
18 **care -- damages.** (1) The purpose of this section is to set statutory criteria governing the civil liability of an
19 electric facilities provider for wildfire-related claims. An electric facilities provider has an obligation to serve the
20 public, and a standard of strict liability may not be applied to an electric facilities provider as follows:

21 (a) in a cause of action alleging the electric facilities provider's electric facilities or electric
22 transmission and distribution activities caused wildfire-related damages; or

23 (b) in a cause of action alleging an electric facilities provider's wildfire mitigation activities
24 conducted in accordance with a wildfire mitigation plan caused damages.

25 (2) An electric facilities provider may be found civilly liable only under the provisions of this section,
26 and may not be found civilly liable under any other statute, theory of recovery, or common law claim, for
27 wildfire-related injury or damages arising from the electric facilities provider's electric facilities or electric
28 transmission and distribution activities or for injury or damages arising from any act or omission of the electric

1 facilities provider associated with implementing a wildfire mitigation plan.

2 (3) An electric facilities provider may be found civilly liable for wildfire-related injury or damages
3 arising from the electric facilities provider's electric facilities or electric transmission and distribution activities or
4 for injury or damages arising from an act or omission of the electric facilities provider associated with
5 implementing a wildfire mitigation plan only if the party seeking recovery establishes:

6 (a) the electric facilities provider failed to exercise the degree of care, skill, and learning expected
7 of a reasonable, similarly situated electric facilities provider at the time in the state, acting under the same or
8 similar circumstances; and

9 (b) the failure was an actual and proximate cause of the injury to person or property for which
10 recovery is sought.

11 (4) In an action against an electric facilities provider seeking wildfire-related damages arising from
12 the electric facilities provider's electric facilities or electric transmission and distribution activities, there is a
13 rebuttable presumption that the electric facilities provider acted reasonably if the electric facilities provider has
14 adopted and, with respect to the place of the wildfire's ignition, substantially followed a wildfire mitigation plan
15 that contains at a minimum the elements in [section 2(2)], provided that evidence related to the electric facilities
16 provider's actual incremental costs associated with implementing a wildfire mitigation plan may not be
17 considered in determining whether the electric facilities provider substantially followed its wildfire mitigation
18 plan. The presumption in this subsection (4) may be controverted by other evidence.

19 (5) In an action against an electric facilities provider seeking wildfire-related damages arising from
20 the electric facilities provider's electric facilities or electric transmission and distribution activities, the absence of
21 a wildfire mitigation plan may not be construed as evidence of or an inference that the electric facilities provider
22 did not meet the standard in subsection (3)(a), and the fact finder may consider only acts that may have caused
23 the wildfire's ignition and evaluate the electric facilities provider's acts and electric transmission and distribution
24 activities in the context of the electric facilities provider's overall systems, processes, and programs.

25 (6) In an action against an electric facilities provider under this section, if a plaintiff has proved
26 liability, as required:

27 (a) a plaintiff may recover for real and personal property damage pursuant to 50-63-104;

28 (b) a plaintiff may not recover noneconomic losses unless the plaintiff suffered bodily injury or

1 death proximately caused by the wildfire; and

2 (c) an electric facilities provider may not be assessed punitive damages unless there is a showing,
3 by clear and convincing evidence, that the electric facilities provider's actions were grossly negligent or
4 intentional. An electric facilities provider's acts or omissions may not be considered grossly negligent if the
5 electric facilities provider substantially followed its wildfire mitigation plan with respect to the place of ignition.
6 The availability of punitive damages is otherwise subject to the provisions of 27-1-220 and 27-1-221.

7 (7) An electric facilities provider may not be liable in an action brought under this section to the
8 extent that the electric facilities provider establishes that contact between electric facilities and trees or tree
9 limbs originating outside an area the electric facilities provider has a legal right to access or maintain caused
10 the wildfire's ignition, provided, however, this subsection does not alter the rights or obligations under 69-4-103.

11 (8) A civil action against an electric facilities provider under this section must be commenced within
12 3 years from the date the plaintiff first incurred injury or damages, without regard to when the injury or damages
13 are discovered. If a plaintiff commences a civil action under this section, the plaintiff shall make service of
14 process no later than 6 months after filing the complaint. If service of process is not made within the 6-month
15 period, the court, on motion or on its own initiative, shall dismiss the action without prejudice as to a defendant
16 unless that defendant has made an appearance in the civil action. If service of process is not made within the 6-
17 month period, the remaining 3-year period of limitations for a civil action under this section resumes, regardless
18 of whether the civil action is dismissed.

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20 NEW SECTION. Section 4. Notification to tribal governments. The secretary of state shall send a
21 copy of [this act] to each federally recognized tribal government in Montana.

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23 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 3] are intended to be
24 codified as a new part in Title 69, chapter 2, and the provisions of Title 69, chapter 2, apply to [sections 1
25 through 3].

26

27 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

1 the part remains in effect in all valid applications that are severable from the invalid applications.

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3 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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