

BILL ANALYSIS

C.S.H.B. 145
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to a report by the Investigative Committee on the Panhandle Wildfires, on February 26, 2024, a downed power line started what would become the largest wildfire in Texas history, burning over one million acres. Following the fires, the committee heard testimony from individuals involved with the containment of the fires and discussed potential mitigation efforts to prevent future fires, if possible. C.S.H.B. 145 seeks to expand existing mitigation efforts by requiring certain electric utilities and electric cooperatives to submit a mitigation plan to the Public Utility Commission of Texas that includes information regarding how the utility or cooperative will reduce fire risks and respond to a fire event.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 145 amends the Utilities Code to include wildfire losses that could not have been reasonably anticipated and included under an electric utility's operating and maintenance expenses among the specified types of potential liability or catastrophic property losses for which the utility may self-insure. The bill also authorizes an electric utility to self-insure all or part of potential damages the utility may be liable for resulting from personal injury or property damage caused by a wildfire but expressly does not authorize a utility to self-insure for damage from a wildfire event the utility caused intentionally, recklessly, or with gross negligence.

C.S.H.B. 145 provides the following conditions under which the Public Utility Commission of Texas (PUC) must approve an otherwise qualifying self-insurance plan as an alternative to the PUC finding that the plan, considering all costs, is a lower cost alternative to purchasing commercial insurance:

- the PUC finding that commercial insurance alone is insufficient to cover potential liability, damages, or catastrophic property loss; or
- the PUC finding that the electric utility cannot obtain commercial insurance for a reasonable premium.

The bill requires the PUC, in approving a self-insurance plan, to prioritize the consideration of the presence and potential extent of wildfire losses, including historical data, actuarial studies and analyses, and the possibility of the electric utility's exposure to losses from multiple types of disasters occurring within the utility's service territory.

C.S.H.B. 145 requires an electric utility or an electric cooperative that owns a transmission or distribution facility in a wildfire risk area to file, and authorizes a municipally owned utility or an electric utility that is a river authority to file, a wildfire mitigation plan with the PUC that includes the following:

- a description of each area to which the utility or cooperative provides transmission or distribution service that is in a wildfire risk area and the utility's or cooperative's process for periodically inspecting the utility's or cooperative's transmission and distribution facilities in those areas;
- a detailed plan for vegetation management in the wildfire risk area;
- a detailed operations plan for reducing the likelihood of wildfire ignition from the utility's or cooperative's facilities and for responding to a wildfire;
- a description of the procedures the utility or cooperative intends to use to restore the utility's or cooperative's system during and after a wildfire event, including contact information for the utility or cooperative that may be used for coordination with the Texas Division of Emergency Management (TDEM) and first responders, defined by reference to the Texas Disaster Act of 1975;
- the utility's or cooperative's community outreach and public awareness plan regarding wildfire risks and actual wildfires affecting the utility's or cooperative's service territory or system, including a specific communications plan for responding to a wildfire event;
- any infrastructure report, maintenance report, or distribution pole maintenance plan required by the PUC;
- an analysis of the wildfire mitigation plan prepared by an independent expert in fire risk mitigation; and
- any other information the PUC may require.

The bill requires the PUC to issue an order not later than the 180th day after a wildfire mitigation plan is filed with the PUC that approves the plan, if the PUC finds that approval is in the public interest, or modifies or rejects the plan as necessary to be consistent with the public interest. The bill defines "wildfire risk area" as an area determined by TDEM or an electric utility, electric cooperative, or municipally owned utility to be at an elevated risk for wildfire.

C.S.H.B. 145 subjects an electric utility or electric cooperative that does not implement an approved plan to an administrative penalty under relevant provisions of the Public Utility Regulatory Act providing for judicial review, enforcement, and penalties. This provision does not apply to an electric utility that is a river authority.

C.S.H.B. 145 exempts an electric utility, municipally owned utility, or electric cooperative that submits and obtains PUC approval for a wildfire mitigation plan from liability for damages resulting from a wildfire ignited or propagated by the utility's or cooperative's facility unless a trier of fact in a civil action finds that the utility or cooperative intentionally, recklessly, or negligently caused the damage. The bill establishes as an affirmative defense to liability in an action brought against such a utility or cooperative for damages resulting from a wildfire ignited or propagated by the utility's or cooperative's facility that the utility or cooperative was in compliance with relevant measures of its approved wildfire mitigation plan with respect to the specific equipment alleged to have ignited or propagated the wildfire that caused the damages. These liability provisions do not apply to an electric utility, municipally owned utility, or electric cooperative that does not file a wildfire mitigation plan or that files a plan that is rejected by the PUC.

C.S.H.B. 145 authorizes a trier of fact, in an action brought against an electric utility, municipally owned utility, or electric cooperative for damages resulting from a wildfire ignited or propagated by the utility's or cooperative's facility, to consider relevant factors contributing to the wildfire ignition or propagation to the extent the utility's or cooperative's approved wildfire mitigation plan departed from nationally accepted safety standards, including the National Electrical Safety Code as published by the Institute of Electrical and Electronics Engineers, in effect at the time the plan was approved.

C.S.H.B. 145 requires the PUC to adopt any rules necessary to implement the bill's provisions relating to self-insurance and wildfire mitigation plans not later than the 180th day after the bill's effective date. The bill authorizes an electric utility, municipally owned utility, or electric cooperative to file a wildfire mitigation plan at any time after the bill's effective date, regardless of whether the PUC has adopted any such rules before the date of the filing.

C.S.H.B. 145 makes its provisions relating to liability for damages caused by wildfire applicable only to a cause of action that accrues on or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 145 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute set out the contents of wildfire mitigation plans authorized or required to be submitted to the PUC, as applicable. However, the substitute includes among those contents any infrastructure report, maintenance report, or distribution pole maintenance plan required by the PUC and an analysis of the wildfire mitigation plan prepared by an independent expert in fire risk mitigation, which did not appear in the introduced.

The substitute extends the deadline by which the PUC is required to issue an order approving, modifying, or rejecting a wildfire mitigation plan from not later than the 60th day after the plan is filed with the PUC, as in the introduced, to not later than the 180th day after that date.

The substitute includes provisions absent from the introduced subjecting an electric utility or electric cooperative that does not implement an approved plan to an applicable administrative penalty and making that provision inapplicable to an electric utility that is a river authority.

While both the introduced and the substitute exempt an electric utility, municipally owned utility, or electric cooperative for which the PUC has approved a wildfire mitigation plan from liability for damages resulting from a wildfire ignited or propagated by the utility's or cooperative's facilities, the bill versions differ in the following ways:

- the introduced additionally provided such an exemption for damages resulting from a wildfire ignited or propagated by the utility's or cooperative's actions, whereas the substitute does not;
- whereas the introduced established that the exemption does not apply if a court of competent jurisdiction finds that the utility or cooperative intentionally, recklessly, or with negligence caused the damage, the substitute establishes that the exemption does not apply if a trier of fact in a civil action makes such a finding; and
- the substitute includes a provision absent from the introduced establishing that these liability provisions do not apply to a utility or cooperative that does not file a wildfire mitigation plan or that files a plan that is rejected.

Whereas the introduced established as an affirmative defense to liability in a civil action brought against an electric utility, municipally owned utility, or electric cooperative for personal injury or property damages caused by a wildfire ignited or propagated by the utility's or cooperative's facilities that a court of competent jurisdiction finds that the utility or cooperative was in material compliance with relevant measures of its approved plan, the substitute establishes as an affirmative defense to liability in an action brought against such a utility or cooperative for damages resulting from such a wildfire that the utility or cooperative was in compliance with

relevant measures of its approved plan with respect to the specific equipment alleged to have ignited or propagated the wildfire that caused the damages.

The substitute includes a provision absent from the introduced authorizing a trier of fact, in an action against an electric utility, municipally owned utility, or electric cooperative for damages resulting from a wildfire ignited or propagated by the utility's or cooperative's facility, to consider relevant factors contributing to the wildfire ignition or propagation to the extent the utility's or cooperative's approved wildfire mitigation plan departed from applicable nationally accepted safety standards in effect at the time the plan was approved.

The substitute omits the provision from the introduced establishing that a wildfire mitigation plan filed with the PUC after the bill's effective date is subject to review, modification, approval, or rejection by the PUC under the bill's provisions regardless of whether the PUC has adopted relevant rules before the date of the filing.

Whereas the introduced required the PUC to adopt any rules as necessary to implement any of the bill's provisions, the substitute requires the PUC to adopt any rules necessary to implement the bill's provisions relating to self-insurance and wildfire mitigation plans.