

SUBJECT: Requiring utilities to file wildfire mitigation plans with PUC

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — King, Anchía, Darby, Y. Davis, Geren, Guillen, Hull,
McQueeney, Metcalf, Phelan, Raymond, Turner

0 nays

3 absent — Hernandez, Smithee, Thompson

WITNESSES: For - Mark Bell, Association of Electric Companies of Texas; Matt Henry, Oncor Electric Delivery; Katie Coleman, Texas Assoc of Manufacturers; Julia Harvey, Texas Electric Cooperatives; Stephanie Houle, Xcel Energy; Mikal Watts (*Registered, but did not testify*: Isaac Albarado, Kelly Sadler, American Electric Power Texas, Electric Transmission Texas; Jeff Bonham, CenterPoint Energy, Inc.; Scott Hutchinson, Entergy Texas; Taylor Borer, Garland Power & Light; Sloan Byerly, Greenville Electric Utility System (GEUS); Cyrus Reed, Lone Star Chapter Sierra Club; Tom Oney, Lower Colorado River Authority; Walt Baum, Powering Texans; Kamil Cook, Public Citizen Texas; Michael Ruggieri, Southwestern Elec. Power Co. (SWEPCO); Jeremy Mazur, Texas 2036; Josh Winegarner, Texas Cattle Feeders Association; Taylor Kilroy, Texas Public Power Association; Ben Utley, Texas-New Mexico Power (TNMP); Mance Zachary, Vistra Corporation; Damon Withrow, Xcel Energy)

Against - (*Registered, but did not testify*: Walter Gonzales, American Property Casualty Insurance Association; Ward Tisdale, National Association of Mutual Insurance Companies)

On - Jay Thompson, Insurance Council of Texas; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Jack Walker, Texas Trial Lawyers Association; Mark Grotefeld (*Registered, but did not testify*: Connie Corona, Public Utility Commission of Texas)

BACKGROUND: Utilities Code sec. 36.064 authorizes an electric utility to self-insure all or part of the utility's potential liability or catastrophic property loss that could not have been reasonably anticipated. The statute requires the Public Utility Commission (PUC) to approve a utility's self-insurance plan if PUC finds that the coverage is in the public interest, the plan is a lower cost alternative to purchasing commercial insurance, and ratepayers will receive the benefits of the savings.

DIGEST: CSHB 145 would establish procedures related to wildfire risk mitigation planning and associated liability for electric service providers and expand the conditions under which a utility could self-insure.

Wildfire mitigation plans. Under CSHB 145, electric utilities and cooperatives would be required, and municipally owned utilities and river authorities would be authorized, to file a wildfire mitigation plan with the Public Utility Commission (PUC). The plan would have to include:

- a description of each area served by the entity that was a wildfire risk area and the entity's process for periodically inspecting 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 entity's facilities and for responding to a wildfire;
- a description of the entity's intended procedures to restore its system during and after a wildfire, including contact information that could be used for coordination with the Texas Division of Emergency Management (TDEM) and first responders;
- the entity's community outreach and public awareness plan regarding wildfire risks and actual wildfires affecting the entity's service territory or system, including a specific communication plan for responding to a wildfire;
- any infrastructure report, maintenance report, or distribution pole maintenance plan required by PUC;
- an analysis of the wildfire mitigation plan by an independent expert in fire risk mitigation; and
- any other information required by PUC.

Within 180 days of the plan being filed, PUC would have to issue an order that PUC either approved the plan if it found approval to be in the public interest or modified or rejected the plan as necessary to be consistent with public interest.

An electric utility or cooperative that did not implement a mitigation plan under the bill would be subject to an administrative penalty as provided for under the Public Utility Regulatory Act.

CSHB 145 would establish that an electric utility, municipally owned utility, or electric cooperative that submitted and obtained approval for a plan under the bill was not liable for damages resulting from a wildfire ignited or propagated by the entity's facility unless a trier of fact in a civil action found that the entity intentionally, recklessly, or negligently caused the damage.

It would be an affirmative defense to liability 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 entity's facility that the entity 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.

In an action brought against an entity for such damages, a trier of fact could consider relevant factors contributing to the wildfire ignition or propagation to the extent the entity's approved plan departed from nationally accepted safety standards in effect at the time the plan was approved.

The liability protection and affirmative defense under the bill would not apply to an entity that did not file a wildfire mitigation plan or whose plan was rejected by PUC.

Utility self-insurance. CSHB 145 also would amend Utilities Code sec. 36.064 to authorize an electric utility to self-insure all or part of potential

damages the utility could be liable for resulting from personal injury or property damage caused by a wildfire.

The bill would amend the conditions that a utility's self-insurance must meet under Utilities Code sec. 36.064 in order to be approved by PUC to allow, as alternatives to the condition that the plan was a lower cost alternative to commercial insurance:

- the condition that commercial insurance alone was insufficient to cover potential liability, damages, or catastrophic property loss; or
- the condition that the utility could not obtain commercial insurance for a reasonable premium.

In approving a utility's self-insurance plan, PUC would be required 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 utility's exposure to losses from disasters in its territory. The bill would not authorize a utility to self-insure for damages from a wildfire event that the utility caused intentionally, recklessly, or with gross negligence.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2025.

**SUPPORTERS
SAY:**

CSHB 145 would help mitigate the risk of wildfire and provide regulatory certainty and accountability by requiring electric utilities and co-ops to file mitigation plans with PUC. Increased risk of extreme weather, including wildfires, has led to higher insurance costs, with some insurers even leaving the state, making it harder for utilities to find commercial insurance. The wildfire mitigation plans required by CSHB 145 would help utilities derisk, which could help them find affordable insurance, while also enhancing transparency. The bill also would expand utilities' ability to self-insure in cases where commercial insurance was not readily accessible, which could lower costs for customers and communities.

CSHB 145 would provide a degree of liability protection to utilities that complied with wildfire mitigation plans approved by PUC, providing a balanced approach to accountability and risk management that would help achieve the goals of preventing wildfires and protecting those affected by wildfires, including ratepayers.

CRITICS
SAY:

CSHB 145 would provide too much immunity to utilities that were responsible for wildfire damages. Granting liability protections for complying with certain portions of a mitigation plan and preventing insurers from subrogating the cost of wildfire damages against utilities could put stress on insurance markets as they adjusted for risk, potentially accelerating the withdrawal of insurers from the state and leading to higher premiums and diminished coverage for homes and businesses.

OTHER
CRITICS
SAY:

CSHB 145 would not provide sufficient liability protections for utilities that complied with an approved wildfire mitigation plan, since a factfinder in a case could still find that a utility was negligent or that the mitigation plan departed from nationally accepted safety standards, which are not clearly defined.