

BILL ANALYSIS

Senate Research Center

H.B. 145
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Increased risk of extreme weather, including wildfires, has led to higher insurance costs and fewer options for utilities to find commercial insurance. Current statute allows an electric utility to self-insure all or part of the utility's potential liability or catastrophic property loss, including windstorm, fire, and explosion losses that could not have been reasonably anticipated and included under operating and maintenance expenses. H.B. 145 would further allow an electric utility to self-insure for potential damages the utility may be liable for resulting from personal injury or property damage caused by a wildfire in cases where commercial insurance alone is insufficient to cover the loss, or the utility cannot obtain commercial insurance for a reasonable premium.

The bill would amend the conditions that a utility's self-insurance must meet in order to be approved by the Public Utility Commission (PUC), prioritizing wildfire risk as a consideration in the evaluation, and including review of 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.

H.B. 145 provides that an electric utility or an electric cooperative that owns a transmission or distribution facility in a wildfire risk area shall file, and a municipally owned utility or an electric utility that is a river authority may file, a wildfire mitigation plan with the PUC. The plan must provide information related to the utility's service area susceptible to wildfires, an inspection process, vegetation management, operations plan to prevent and respond to ignition from an entity's facilities, procedures for system restoration after a wildfire, community outreach, any infrastructure report, maintenance report, or distribution pole maintenance plan required by the PUC, and a third-party fire risk analysis.

H.B. 145 directs the PUC to, within 180 days of a plan being filed, issue an order either approving the plan if found to be in the public interest, or modifying or rejecting the plan as necessary to be consistent with the public interest. An electric utility or cooperative that does not implement a mitigation plan under the bill would be subject to an administrative penalty.

H.B. 145 provides that utilities with PUC-approved wildfire mitigation plans are not liable for damages resulting from a wildfire unless they are found by a trier of fact to have acted intentionally, recklessly, or negligently. The bill provides that compliance with the approved wildfire mitigation plan is an affirmative defense to liability in an action for damages resulting from a wildfire ignited or propagated by the utility's or cooperative's facility. Further, the bill provides that 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 described by the bill would not apply to an entity that did not file a wildfire mitigation plan or whose plan was rejected by the PUC.

H.B. 145 amends current law relating to risk mitigation planning and associated liability for providers of electric service and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

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

(a) Authorizes an electric utility to 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 damage caused by a wildfire.

(b) Requires the Public Utility Commission of Texas (PUC) to approve a self-insurance plan under Section 36.064 (Self-Insurance) if the PUC finds certain criteria are met, including one of certain determinations, including commercial insurance alone is insufficient to cover potential liability, damages, or catastrophic property loss or the electric utility cannot obtain commercial insurance for a reasonable premium. Makes a nonsubstantive change.

(c-1) Requires the PUC, in approving a self-insurance plan under this section, 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.

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

SECTION 2. Amends Subchapter D, Chapter 38, Utilities Code, by adding Sections 38.080 and 38.081, as follows:

Sec. 38.080. WILDFIRE MITIGATION PLAN. (a) Defines "division," "first responder," "plan," and "wildfire risk area."

(b) 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, with the PUC a wildfire mitigation plan that includes certain information, plans, and procedures.

(c) Requires the PUC to issue an order not later than the 180th day after a 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.

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

Sec. 38.081. LIABILITY FOR DAMAGES CAUSED BY WILDFIRE. (a) Provides that an electric utility, municipally owned utility, or electric cooperative that submits and

obtains PUC approval for a wildfire mitigation plan under Section 38.080 is not liable 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.

(b) Provides that it is 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 utility's or cooperative's facility that the utility or cooperative was in compliance with relevant measures of the utility's or cooperative's wildfire mitigation plan approved under Section 38.080 with respect to the specific equipment alleged to have ignited or propagated the wildfire that caused the damages.

(c) Authorizes a trier of fact, notwithstanding Subsection (a) or (b), 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 wildfire mitigation plan approved by the PUC under Section 38.080 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.

(d) Provides that Subsections (a) and (b) do not apply to an electric utility, municipally owned utility, or electric cooperative that does not file a wildfire mitigation plan under Section 38.080 or files a plan that is rejected by the PUC.

(e) Provides that, notwithstanding any other provision of this section, this section does not affect an express contractual right of a person or entity involving a communications facility or the shared use of an electric facility or pole attachment.

SECTION 3. (a) Requires the PUC to adopt any rules necessary to implement Section 36.064, Utilities Code, as amended by this Act, and Section 38.080, Utilities Code, as added by this Act, not later than the 180th day after the effective date of this Act.

(b) Authorizes an electric utility, municipally owned utility, or electric cooperative to file a wildfire mitigation plan, as authorized by Section 38.080, Utilities Code, as added by this Act, at any time after the effective date of this Act, regardless of whether the PUC has adopted any rules described by Subsection (a) of this section before the date of the filing.

SECTION 4. Makes application of Section 38.081, Utilities Code, as added by this Act, prospective.

SECTION 5. Effective date: upon passage or September 1, 2025.