

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

DRAFT
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PRE-CLICS

Bill 5

LLS NO. 26-0104.02 Sarah Lozano

INTERIM COMMITTEE BILL

Wildfire Matters Review Committee

BILL TOPIC: Utility Wildfire Mitigation Plans

A BILL FOR AN ACT

101 **CONCERNING WILDFIRE MITIGATION PLANS SUBMITTED BY ELECTRIC**
102 **UTILITIES, AND, IN CONNECTION THEREWITH, CREATING THE**
103 **COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION**
104 **ENTERPRISE, TASKING THE PUBLIC UTILITIES COMMISSION AND**
105 **THE COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION**
106 **ENTERPRISE WITH REVIEWING ELECTRIC UTILITY WILDFIRE**
107 **MITIGATION PLANS, AND LIMITING LIABILITY FOR**
108 **WILDFIRE-RELATED DAMAGES FOR ELECTRIC UTILITIES WITH**
109 **APPROVED WILDFIRE MITIGATION PLANS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that

*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.*

applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates the Colorado wildfire mitigation plan certification enterprise (enterprise) in the division of fire prevention and control in the department of public safety (division). The enterprise is tasked with reviewing the wildfire mitigation plans of electric utilities that are not rate regulated by the public utilities commission (commission). The commission is tasked with reviewing the wildfire mitigation plans of electric utilities that are rate regulated by the commission.

The enterprise operates as a government-owned business imposing a fee on non-rate-regulated electric utilities to cover the enterprise's costs of reviewing the wildfire mitigation plans of non-rate-regulated electric utilities. The fees are credited to the Colorado wildfire mitigation plan certification enterprise cash fund for use by the enterprise to carry out its purposes and duties. The director of the division must appoint the members of the board of directors of the enterprise no later than July 1, 2026.

On and after September 1, 2026, the commission and enterprise must review wildfire mitigation plans submitted by electric utilities. The commission or enterprise shall review and either approve, deny, or approve with modifications a wildfire mitigation plan within 120 days after the submission of the plan. If an electric utility's wildfire mitigation plan is approved by either the commission or enterprise, the electric utility must:

- Submit to either the commission or enterprise an annual report detailing the electric utility's substantial compliance with the plan (annual report); and
- No later than every 5 years after the date the plan is approved, submit to the commission or enterprise a subsequent or updated plan.

No later than 60 days after the submission of an annual report, the commission or enterprise shall determine whether the electric utility substantially complied with the electric utility's wildfire mitigation plan during the preceding year.

In the event of a legal action for wildfire-related damages against an electric utility with an approved wildfire mitigation plan (covered wildfire action):

- There is a rebuttable presumption that the electric utility acted in a reasonable and prudent manner and is not liable for damages from the wildfire;
- Damages for economic losses and noneconomic losses are limited to certain amounts and damages for noneconomic losses may only be recovered for physical injury or death claims; and

- Punitive damages may not be recovered.

A person shall not bring a covered wildfire action more than 3 years after the initial ignition of the wildfire.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add 24-33.5-1241** as
3 follows:

4 **24-33.5-1241. Colorado wildfire mitigation plan certification
5 enterprise - creation - board - membership - powers and duties - fees
6 - cash fund - legislative declaration - definitions - rules - repeal.**

7 **(1) Legislative declaration.** (a) THE GENERAL ASSEMBLY FINDS THAT:

8 (I) WILDFIRES PRESENT A SIGNIFICANT RISK TO LIFE AND PROPERTY
9 THROUGHOUT COLORADO AND HAVE CAUSED BILLIONS OF DOLLARS IN
10 PROPERTY DAMAGE IN THE STATE, DISRUPTING THE LIVES AND ECONOMIC
11 WELL-BEING OF COLORADANS;

12 (II) THESE STAGGERING LOSSES HAVE RESULTED IN SIGNIFICANT
13 INCREASES IN THE COST OF INSURANCE, PARTICULARLY IN THE ELECTRIC
14 UTILITY INDUSTRY;

15 (III) THESE RISING INSURANCE COSTS HAVE HAD A SIGNIFICANT
16 IMPACT ON ELECTRIC UTILITIES, CAUSING ELECTRIC UTILITIES TO BE
17 UNABLE TO FIND SUFFICIENT COVERAGE OR UNABLE TO FIND SUFFICIENT
18 COVERAGE AT AN AFFORDABLE COST;

19 (IV) FACING THE RISK OF SIGNIFICANT DAMAGES TO UTILITY
20 INFRASTRUCTURE AND WITHOUT AFFORDABLE INSURANCE, MANY
21 ELECTRIC UTILITIES IN COLORADO COULD FACE BANKRUPTCY IN THE
22 EVENT OF A SIGNIFICANT WILDFIRE LOSS, WHICH WOULD THREATEN THE
23 STABILITY AND RELIABILITY OF THE STATE'S ELECTRIC RESOURCES; AND

24 (V) PROTECTING RELIABLE RESOURCES OF ELECTRICITY IS

1 ESSENTIAL FOR SUSTAINING THE EVERYDAY LIFE OF COLORADANS AND
2 FOR COLORADO TO MEET ITS BENEFICIAL ELECTRIFICATION AND
3 STATEWIDE GREENHOUSE GAS REDUCTION GOALS.

4 (b) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT:

5 (I) IT IS IN THE PUBLIC INTEREST TO CREATE AN ENTERPRISE
6 WITHIN THE DIVISION THAT IS COMMITTED TO REVIEWING WILDFIRE
7 MITIGATION PLANS, ANNUAL REPORTS, AND UPDATED PLANS OF
8 NON-RATE-REGULATED ELECTRIC UTILITIES PURSUANT TO SECTION
9 40-2-140, WHICH HELPS ENSURE THE FINANCIAL STABILITY AND
10 INSURABILITY OF THESE NON-RATE-REGULATED ELECTRIC UTILITIES AND
11 MAINTAIN THE CONTINUOUS SUPPLY OF SAFE, RELIABLE ELECTRICITY TO
12 THE STATE;

13 (II) THE ACTIVITIES OF THE ENTERPRISE SHALL BE FUNDED BY
14 REVENUE GENERATED FROM COLORADO WILDFIRE MITIGATION PLAN
15 CERTIFICATION FEES PAID BY NON-RATE-REGULATED ELECTRIC UTILITIES
16 AND ANY GIFTS, GRANTS, AND DONATIONS RECEIVED;

17 (III) IT IS APPROPRIATE THAT NON-RATE-REGULATED ELECTRIC
18 UTILITIES SHOULD PAY A COLORADO WILDFIRE MITIGATION PLAN
19 CERTIFICATION FEE IMPOSED BY THE ENTERPRISE, AS
20 NON-RATE-REGULATED ELECTRIC UTILITIES ARE THE DIRECT
21 BENEFICIARIES OF SERVICES PROVIDED BY THE ENTERPRISE, WHICH
22 SERVICES INCLUDE THE REVIEWING OF WILDFIRE MITIGATION PLANS,
23 ANNUAL REPORTS, AND UPDATED PLANS OF NON-RATE-REGULATED
24 ELECTRIC UTILITIES PURSUANT TO SECTION 40-2-140;

25 (IV) CONSISTENT WITH THE DETERMINATION OF THE COLORADO
26 SUPREME COURT IN *NICHOLL V. E-470 PUBLIC HIGHWAY AUTHORITY*, 896
27 P.2d 859 (COLO. 1995), THAT THE POWER TO IMPOSE TAXES IS

1 INCONSISTENT WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE
2 X OF THE STATE CONSTITUTION, THE GENERAL ASSEMBLY CONCLUDES
3 THAT THE COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION FEE IS
4 A FEE, NOT A TAX, AND THE ENTERPRISE OPERATES AS A BUSINESS
5 BECAUSE THE COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION FEE
6 IS:

7 (A) IMPOSED FOR THE SPECIFIC BUSINESS PURPOSES OF REVIEWING
8 WILDFIRE MITIGATION PLANS, ANNUAL REPORTS, AND UPDATED PLANS OF
9 NON-RATE-REGULATED ELECTRIC UTILITIES PURSUANT TO SECTION
10 40-2-140; AND

11 (B) COLLECTED AT A RATE THAT IS REASONABLY RELATED TO THE
12 OVERALL COST OF THE BUSINESS SERVICES BEING PROVIDED; AND

13 (V) SO LONG AS THE ENTERPRISE QUALIFIES AS AN ENTERPRISE FOR
14 PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, THE
15 REVENUE FROM THE COLORADO WILDFIRE MITIGATION PLAN
16 CERTIFICATION FEE IMPOSED, COLLECTED, AND ADMINISTERED BY THE
17 ENTERPRISE IS NOT STATE FISCAL YEAR SPENDING, AS DEFINED IN SECTION
18 24-77-102(17), OR STATE REVENUES, AS DEFINED IN SECTION 24-77-103.6
19 (6)(c), AND DOES NOT COUNT AGAINST EITHER THE STATE FISCAL YEAR
20 SPENDING LIMIT IMPOSED BY SECTION 20 OF ARTICLE X OF THE STATE
21 CONSTITUTION OR THE EXCESS STATE REVENUES CAP, AS DEFINED IN
22 SECTION 24-77-103.6 (6)(b)(I)(G).

23 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
24 REQUIRES:

25 (a) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ENTERPRISE
26 APPOINTED PURSUANT TO SUBSECTION (4) OF THIS SECTION.

27 (b) "COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION FEE"

1 OR "FEE" MEANS THE FEE IMPOSED BY THE ENTERPRISE AND PAID BY A
2 NON-RATE-REGULATED ELECTRIC UTILITY PURSUANT TO SUBSECTION
3 (5)(b) OF THIS SECTION.

4 (c) "ENTERPRISE" MEANS THE COLORADO WILDFIRE MITIGATION
5 PLAN CERTIFICATION ENTERPRISE CREATED IN SUBSECTION (3)(a) OF THIS
6 SECTION.

7 (d) "FUND" MEANS THE COLORADO WILDFIRE MITIGATION PLAN
8 CERTIFICATION ENTERPRISE CASH FUND CREATED IN SUBSECTION (6)(a) OF
9 THIS SECTION.

10 (e) "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE
11 IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR
12 STATISTICS CONSUMER PRICE INDEX, OR A SUCCESSOR INDEX, FOR
13 DENVER-AURORA-LAKewood FOR ALL ITEMS PAID FOR BY URBAN
14 CONSUMERS.

15 (f) "NON-RATE-REGULATED ELECTRIC UTILITY" HAS THE MEANING
16 SET FORTH IN SECTION 40-2-140 (1)(d).

17 (g) "WILDFIRE MITIGATION PLAN" OR "PLAN" HAS THE MEANING
18 SET FORTH IN SECTION 40-2-140 (1)(g).

19 (3) **Enterprise created.** (a) THE COLORADO WILDFIRE
20 MITIGATION PLAN CERTIFICATION ENTERPRISE IS CREATED IN THE DIVISION
21 AND EXERCISES ITS POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS AS
22 A GOVERNMENT-OWNED BUSINESS IN THE DIVISION TO EXECUTE ITS
23 BUSINESS PURPOSES SET FORTH IN THIS SUBSECTION (3). THE ENTERPRISE
24 IS CREATED FOR THE PURPOSES OF:

25 (I) IMPOSING AND ASSESSING COLORADO WILDFIRE MITIGATION
26 PLAN CERTIFICATION FEES ON NON-RATE-REGULATED ELECTRIC UTILITIES
27 THAT SUBMIT A WILDFIRE MITIGATION PLAN, ANNUAL REPORT, OR

1 UPDATED PLAN TO THE ENTERPRISE FOR REVIEW PURSUANT TO SECTION
2 40-2-140;

3 (II) REVIEWING WILDFIRE MITIGATION PLANS, ANNUAL REPORTS,
4 AND UPDATED PLANS SUBMITTED TO THE ENTERPRISE BY
5 NON-RATE-REGULATED ELECTRIC UTILITIES PURSUANT TO SECTION
6 40-2-140;

7 (III) ISSUING WRITTEN FINDINGS OF SUBSTANTIAL COMPLIANCE
8 PURSUANT TO SECTION 40-2-140; AND

9 (IV) ENSURING THAT WILDFIRE MITIGATION PLANS, ANNUAL
10 REPORTS, UPDATED PLANS, AND FINDINGS OF SUBSTANTIAL COMPLIANCE
11 ARE PUBLICLY ACCESSIBLE.

12 (b) THE BOARD, IN CONSULTATION WITH THE DIVISION, SHALL
13 ADMINISTER THE ENTERPRISE IN ACCORDANCE WITH THIS SECTION.

14 (c) (I) THE ENTERPRISE CONSTITUTES AN ENTERPRISE FOR
15 PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO
16 LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND
17 RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS, AS
18 DEFINED IN SECTION 24-77-102 (7), FROM ALL COLORADO STATE AND
19 LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN
20 ENTERPRISE, THE ENTERPRISE IS NOT SUBJECT TO SECTION 20 OF ARTICLE
21 X OF THE STATE CONSTITUTION.

22 (II) THE ENTERPRISE IS AUTHORIZED TO ISSUE REVENUE BONDS FOR
23 THE EXPENSES OF THE ENTERPRISE, SECURED BY REVENUE OF THE
24 ENTERPRISE.

25 (4) **Enterprise board of directors created - duties - repeal.**
26 (a) THE ENTERPRISE BOARD OF DIRECTORS IS CREATED TO ADMINISTER
27 THE ENTERPRISE. THE BOARD CONSISTS OF THE FOLLOWING FIVE MEMBERS

1 APPOINTED BY THE DIRECTOR:

2 (I) TWO MEMBERS REPRESENTING TWO SEPARATE,

3 NON-RATE-REGULATED ELECTRIC UTILITIES;

4 (II) ONE MEMBER WITH EXPERTISE IN EMERGENCY MANAGEMENT;

5 (III) ONE MEMBER REPRESENTING THE COLORADO FOREST HEALTH

6 COUNCIL CREATED IN SECTION 23-31-316 (2); AND

7 (IV) ONE MEMBER WITH EXPERTISE IN WILDFIRE MITIGATION OR

8 VEGETATION MANAGEMENT.

9 (b) (I) THE DIRECTOR SHALL APPOINT INITIAL MEMBERS TO THE
10 BOARD NO LATER THAN JULY 1, 2026.

11 (II) THIS SUBSECTION (4)(b) IS REPEALED, EFFECTIVE JULY 1, 2027.

12 (c) BOARD MEMBERS SERVE FOUR-YEAR TERMS; EXCEPT THAT THE
13 DIRECTOR SHALL MAKE THE INITIAL TERMS OF TWO OF THE BOARD
14 MEMBERS TWO YEARS. A BOARD MEMBER MAY SERVE AN UNLIMITED
15 NUMBER OF TERMS.

16 (d) BOARD MEMBERS SERVE WITHOUT COMPENSATION BUT ARE
17 ENTITLED TO RECEIVE REIMBURSEMENT FOR TRAVEL EXPENSES INCURRED
18 IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

19 (e) (I) THE CHAIR AND VICE-CHAIR OF THE BOARD ARE SELECTED
20 BY THE MEMBERS OF THE BOARD IN ACCORDANCE WITH THE BOARD'S
21 BYLAWS.

22 (II) (A) THE DIRECTOR OR THE DIRECTOR'S DESIGNEE SHALL CALL
23 THE FIRST MEETING OF THE BOARD, AND THE BOARD SHALL SELECT THE
24 CHAIR AND VICE-CHAIR AT THAT MEETING IN ACCORDANCE WITH
25 SUBSECTION (4)(e)(I) OF THIS SECTION.

26 (B) THIS SUBSECTION (4)(e)(II) IS REPEALED, EFFECTIVE JULY 1,
27 2027.

2 **plan certification fee.** (a) IN ADDITION TO THE PURPOSES DESCRIBED IN
3 SUBSECTION (3)(a) OF THIS SECTION AND ANY OTHER POWERS AND DUTIES
4 SPECIFIED IN THIS SECTION, THE BOARD HAS THE FOLLOWING POWERS AND
5 DUTIES ON BEHALF OF THE ENTERPRISE:

6 (I) TO ADOPT PROCEDURES FOR CONDUCTING THE BOARD'S
7 AFFAIRS;

20 (b) (I) BEGINNING IN STATE FISCAL YEAR 2026-27 AND IN
21 FURTHERANCE OF THE ENTERPRISE'S BUSINESS PURPOSES, THE BOARD
22 SHALL IMPOSE THE COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION
23 FEE ON NON-RATE-REGULATED ELECTRIC UTILITIES THAT SUBMIT A
24 WILDFIRE MITIGATION PLAN, ANNUAL REPORT, OR UPDATED PLAN TO THE
25 ENTERPRISE PURSUANT TO SECTION 40-2-140.

26 (II) ON AND AFTER SEPTEMBER 1, 2026, EACH
27 NON-RATE-REGULATED ELECTRIC UTILITY THAT SUBMITS A WILDFIRE

1 MITIGATION PLAN, ANNUAL REPORT, OR UPDATED PLAN TO THE
2 ENTERPRISE FOR REVIEW PURSUANT TO SECTION 40-2-140 SHALL PAY A
3 COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION FEE IN AN AMOUNT
4 DETERMINED BY THE ENTERPRISE TO THE DIVISION, WHICH SHALL COLLECT
5 THE COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION FEE ON
6 BEHALF OF THE ENTERPRISE.

7 (III) BEGINNING IN STATE FISCAL YEAR 2027-28, THE BOARD MAY
8 INCREASE THE FEE FROM THE PREVIOUS YEAR'S FEE, AS ADJUSTED FOR
9 INFLATION. IN EACH OF THE STATE FISCAL YEARS THEREAFTER, ON OR
10 BEFORE MARCH 15, THE BOARD SHALL NOTIFY THE DIVISION OF THE
11 ADJUSTED AMOUNT OF THE FEE, AND ON OR BEFORE APRIL 15, THE
12 DIVISION SHALL PUBLISH THE UPDATED AMOUNT OF THE FEE ON THE
13 DIVISION'S WEBSITE.

14 (IV) MONEY COLLECTED AS A COLORADO WILDFIRE MITIGATION
15 PLAN CERTIFICATION FEE SHALL BE CREDITED TO THE FUND.

16 (V) MONEY COLLECTED BY THE DIVISION AND CREDITED TO THE
17 FUND PURSUANT TO SUBSECTION (5)(b)(IV) OF THIS SECTION:

18 (A) IS COLLECTED FOR THE ENTERPRISE;

19 (B) IS CUSTODIAL MONEY INTENDED FOR THE ENTERPRISE AND
20 HELD TEMPORARILY BY THE DIVISION AND THE STATE TREASURER SOLELY
21 FOR THE PURPOSE OF TRANSFERRING THE MONEY TO THE FUND FOR USE BY
22 THE ENTERPRISE; AND

23 (C) BASED ON THE ENTERPRISE'S STATUS AS AN ENTERPRISE, IS
24 NOT SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION
25 AT ANY TIME DURING THE MONEY'S COLLECTION, TRANSFER, AND USE.

26 (6) **Colorado wildfire mitigation plan certification enterprise**
27 **cash fund - creation - gifts, grants, or donations - repeal.** (a) THE

1 COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION ENTERPRISE CASH
2 FUND IS CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

3 (I) MONEY RECEIVED AS COLORADO WILDFIRE MITIGATION PLAN
4 CERTIFICATION FEES PURSUANT TO SUBSECTION (5)(b) OF THIS SECTION;

5 (II) ANY MONEY RECEIVED FROM THE ISSUANCE OF REVENUE
6 BONDS, AS DESCRIBED IN SUBSECTION (3)(c)(II) OF THIS SECTION;

7 (III) ANY GIFTS, GRANTS, OR DONATIONS MADE TO THE
8 ENTERPRISE OR DIVISION FOR THE PURPOSES OF THIS SECTION; AND

9 (IV) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY
10 APPROPRIATE OR TRANSFER TO THE FUND.

11 (b) (I) SECTION 24-77-108 DOES NOT APPLY TO THE ENTERPRISE
12 BECAUSE THE TOTAL AMOUNT OF MONEY CREDITED OR APPROPRIATED TO
13 THE FUND AS COLORADO WILDFIRE MITIGATION PLAN CERTIFICATION FEES
14 SHALL NOT EXCEED ONE HUNDRED MILLION DOLLARS IN THE FIRST FIVE
15 YEARS OF THE ENTERPRISE'S EXISTENCE.

16 (II) THIS SUBSECTION (6)(b) IS REPEALED, EFFECTIVE JULY 1, 2031.

17 (c) MONEY CREDITED TO THE FUND IS CONTINUOUSLY
18 APPROPRIATED TO THE ENTERPRISE FOR THE PURPOSES SET FORTH IN THIS
19 SECTION AND TO PAY THE ENTERPRISE'S REASONABLE AND NECESSARY
20 OPERATING EXPENSES. THE STATE TREASURER SHALL CREDIT ALL
21 INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF
22 MONEY IN THE FUND TO THE FUND.

23 (d) ANY UNEXPENDED AND UNENCUMBERED MONEY REMAINING
24 IN THE FUND AT THE END OF A FISCAL YEAR REMAINS IN THE FUND AND IS
25 NOT CREDITED OR TRANSFERRED TO THE GENERAL FUND.

26 (e) THE ENTERPRISE OR DIVISION MAY SEEK, ACCEPT, AND EXPEND
27 GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR

1 THE PURPOSES OF THIS SECTION. THE STATE TREASURER SHALL CREDIT THE
2 GIFTS, GRANTS, OR DONATIONS TO THE FUND.

3 **SECTION 2.** In Colorado Revised Statutes, **add 40-2-140** as
4 follows:

5 **40-2-140. Wildfire mitigation plans submitted by electric**
6 **utilities - review by the commission or enterprise - annual report and**
7 **updated plans - cost recovery - limitation on damages - definitions.**

8 (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
9 OTHERWISE REQUIRES:

10 (a) "COVERED WILDFIRE ACTION" MEANS ANY LEGAL ACTION
11 AGAINST AN ELECTRIC UTILITY WITH A WILDFIRE MITIGATION PLAN
12 APPROVED BY THE COMMISSION OR ENTERPRISE FOR WILDFIRE-RELATED
13 DAMAGES ARISING FROM THE ELECTRIC UTILITY'S ELECTRIC FACILITIES OR
14 TRANSMISSION OR DISTRIBUTION ACTIVITIES.

15 (b) (I) "ELECTRIC UTILITY" MEANS AN INVESTOR-OWNED ELECTRIC
16 UTILITY; A WHOLESALE ELECTRIC COOPERATIVE, AS DEFINED IN SECTION
17 40-2-134 (2); OR A COOPERATIVE ELECTRIC ASSOCIATION, AS DEFINED IN
18 SECTION 40-9.5-102 (1).

19 (II) "ELECTRIC UTILITY" DOES NOT INCLUDE A MUNICIPALLY
20 OWNED UTILITY.

21 (c) "ENTERPRISE" MEANS THE COLORADO WILDFIRE MITIGATION
22 PLAN CERTIFICATION ENTERPRISE CREATED IN SECTION 24-33.5-1241
23 (3)(a).

24 (d) "NON-RATE-REGULATED ELECTRIC UTILITY" MEANS AN
25 ELECTRIC UTILITY THAT IS NOT RATE REGULATED BY THE COMMISSION.

26 (e) "RATE-REGULATED ELECTRIC UTILITY" MEANS AN ELECTRIC
27 UTILITY THAT IS RATE REGULATED BY THE COMMISSION.

6 (g) "WILDFIRE MITIGATION PLAN" OR "PLAN" MEANS A WILDFIRE
7 MITIGATION PLAN SUBMITTED TO EITHER THE COMMISSION OR ENTERPRISE
8 PURSUANT TO SUBSECTION (2) OF THIS SECTION.

17 (b) A NON-RATE-REGULATED UTILITY MAY SUBMIT A WILDFIRE
18 MITIGATION PLAN TO THE ENTERPRISE.

27 (II) THE ELECTRIC UTILITY'S SITUATIONAL AWARENESS PROGRAM.

1 INCLUDING WEATHER MONITORING AND FORECASTING PROCEDURES;

2 (III) THE PROCEDURES, STANDARDS, AND SCHEDULES THAT THE
3 ELECTRIC UTILITY WILL USE TO INSPECT AND OPERATE ITS TRANSMISSION
4 AND DISTRIBUTION INFRASTRUCTURE, IF ANY;

5 (IV) THE PROCEDURES AND STANDARDS THAT THE ELECTRIC
6 UTILITY WILL USE TO PERFORM VEGETATION MANAGEMENT;

7 (V) THE PROPOSED MODIFICATIONS, REPLACEMENTS, AND
8 UPGRADES TO FACILITIES AND PREVENTIVE PROGRAMS THAT THE ELECTRIC
9 UTILITY WILL IMPLEMENT TO REDUCE THE RISK OF ITS ELECTRIC FACILITIES
10 INITIATING A WILDFIRE;

11 (VI) HOW THE ELECTRIC UTILITY WILL COORDINATE WITH OTHER
12 ELECTRIC UTILITIES REGARDING ANY SHARED FACILITIES;

13 (VII) IF THE ELECTRIC UTILITY HAS A PUBLIC SAFETY POWER
14 SHUTOFF PLAN, THAT PLAN, INCLUDING A DESCRIPTION OF HOW A PUBLIC
15 SAFETY POWER SHUTOFF WILL BE IMPLEMENTED; HOW THE ELECTRIC
16 UTILITY WILL COMMUNICATE WITH THE PUBLIC, OTHER UTILITIES, AND
17 EMERGENCY RESPONDERS REGARDING POWER SHUTOFFS; AND
18 PROCEDURES FOR RESTORING POWER UPON THE CONCLUSION OF
19 EMERGENCY CONDITIONS;

20 (VIII) OTHER OPERATIONAL PROCEDURES FOR MITIGATING
21 POTENTIAL WILDFIRES, SUCH AS DISABLING RECLOSERS;

22 (IX) THE PROCEDURES THAT THE ELECTRIC UTILITY INTENDS TO
23 USE TO RESTORE ITS ELECTRICAL SYSTEM IN THE EVENT IT BECOMES
24 DE-ENERGIZED DUE TO THE IMPLEMENTATION OF WILDFIRE OPERATIONAL
25 MITIGATION MEASURES;

26 (X) COMMUNITY OUTREACH AND PUBLIC AWARENESS EFFORTS,
27 PARTICULARLY IN GEOGRAPHIC AREAS IMPACTED BY WILDFIRES; AND

4 (b) THE COMMISSION OR ENTERPRISE, AS APPLICABLE, SHALL
5 REVIEW AND EITHER APPROVE, DENY, OR APPROVE WITH MODIFICATIONS
6 A WILDFIRE MITIGATION PLAN WITHIN ONE HUNDRED TWENTY DAYS AFTER
7 THE SUBMISSION OF THE PLAN. IF THE COMMISSION OR ENTERPRISE FAILS
8 TO APPROVE, DENY, OR APPROVE WITH MODIFICATIONS A WILDFIRE
9 MITIGATION PLAN WITHIN THE TIME FRAME DESCRIBED IN THIS SUBSECTION
10 (3)(b), THE PLAN IS DEEMED APPROVED AS SUBMITTED TO THE
11 COMMISSION OR ENTERPRISE.

17 (I) NO LATER THAN EVERY JUNE 1 FOLLOWING THE YEAR THAT THE
18 PLAN IS APPROVED, THE ELECTRIC UTILITY SHALL:

19 (A) SUBMIT TO EITHER THE COMMISSION OR ENTERPRISE, AS
20 APPLICABLE, AN ANNUAL REPORT DETAILING THE ELECTRIC UTILITY'S
21 SUBSTANTIAL COMPLIANCE WITH THE PLAN; AND

22 (B) REQUEST A DETERMINATION FROM EITHER THE COMMISSION
23 OR ENTERPRISE, AS APPLICABLE, THAT THE ELECTRIC UTILITY HAS
24 SUBSTANTIALLY COMPLIED WITH THE PLAN DURING THE PRECEDING YEAR;
25 AND

26 (II) NO LATER THAN EVERY FIVE YEARS AFTER THE DATE THAT THE
27 PLAN IS APPROVED, THE ELECTRIC UTILITY SHALL SUBMIT TO EITHER THE

1 COMMISSION OR ENTERPRISE, AS APPLICABLE, A SUBSEQUENT OR UPDATED
2 WILDFIRE MITIGATION PLAN, WHICH IS REVIEWED BY THE COMMISSION OR
3 ENTERPRISE PURSUANT TO SUBSECTION (3) OF THIS SECTION.

4 (b) NO LATER THAN SIXTY DAYS AFTER THE SUBMISSION OF AN
5 ANNUAL REPORT DESCRIBED IN SUBSECTION (4)(a)(I) OF THIS SECTION, THE
6 COMMISSION OR ENTERPRISE, AS APPLICABLE, SHALL:

7 (I) MAKE A DETERMINATION WHETHER THE ELECTRIC UTILITY
8 SUBSTANTIALLY COMPLIED WITH THE ELECTRIC UTILITY'S WILDFIRE
9 MITIGATION PLAN DURING THE PRECEDING YEAR; AND

10 (II) IF THE COMMISSION OR ENTERPRISE, AS APPLICABLE, HAS
11 DETERMINED THAT THE ELECTRIC UTILITY IS IN SUBSTANTIAL
12 COMPLIANCE, ISSUE AN ORDER OR WRITTEN FINDING IN ACCORDANCE WITH
13 THAT DETERMINATION.

14 (5) **Rate-regulated electric utilities - recovery of costs.** (a) IF
15 A RATE-REGULATED ELECTRIC UTILITY'S WILDFIRE MITIGATION PLAN HAS
16 BEEN APPROVED BY THE COMMISSION AND IS IN EFFECT ON OR BEFORE THE
17 EFFECTIVE DATE OF THIS SECTION, FOR THE DURATION OF THE APPROVED
18 PLAN, THE RATE-REGULATED ELECTRIC UTILITY IS IN COMPLIANCE WITH
19 THIS SECTION AND IS SUBJECT TO SUBSECTION (6) OF THIS SECTION.

20 (b) (I) THE COMMISSION SHALL AUTHORIZE A RATE-REGULATED
21 ELECTRIC UTILITY TO RECOVER ALL PRUDENTLY INCURRED INVESTMENTS
22 AND EXPENDITURES, INCLUDING THE COSTS OF CAPITAL, MADE TO
23 IMPLEMENT A WILDFIRE MITIGATION PLAN APPROVED BY THE COMMISSION.

24 (II) THE COMMISSION SHALL AUTHORIZE CONCURRENT RECOVERY
25 OF THE COSTS OF CAPITAL INVESTMENTS AND EXPENSES NOT INCLUDED IN
26 BASE RATES AND MADE TO IMPLEMENT A WILDFIRE MITIGATION PLAN
27 APPROVED BY THE COMMISSION, INCLUDING A RETURN USING THE

1 RATE-REGULATED ELECTRIC UTILITY'S MOST RECENTLY AUTHORIZED
2 WEIGHTED AVERAGE COST OF CAPITAL, THROUGH A RIDER OR SURCHARGE
3 ON CUSTOMER BILLS, WHICH IS TRUED UP ANNUALLY AT THE TIME OF THE
4 FILING OF THE RATE-REGULATED ELECTRIC UTILITY'S ANNUAL REPORT
5 WITH THE COMMISSION.

6 **(6) Limitation of liability - statute of limitations.**

7 (a) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, IN A
8 COVERED WILDFIRE ACTION:

9 (I) THERE IS A REBUTTABLE PRESUMPTION THAT THE ELECTRIC
10 UTILITY ACTED IN A REASONABLE AND PRUDENT MANNER AND IS NOT
11 LIABLE FOR DAMAGES FROM THE WILDFIRE UNDER ANY LEGAL THEORY. A
12 PLAINTIFF MAY ONLY REBUT THE PRESUMPTION DESCRIBED IN THIS
13 SUBSECTION (6)(a)(I) AND RECOVER DAMAGES FROM THE ELECTRIC
14 UTILITY UPON PROVING, BY CLEAR AND CONVINCING EVIDENCE, THAT:

15 (A) THE ELECTRIC UTILITY FAILED TO SUBSTANTIALLY COMPLY
16 WITH THE ELECTRIC UTILITY'S APPROVED PLAN AND THE ELECTRIC
17 UTILITY'S FAILURE TO COMPLY WAS THE ACTUAL AND PROXIMATE CAUSE
18 OF THE PLAINTIFF'S CLAIMED DAMAGES; EXCEPT THAT THIS SUBSECTION
19 (6)(a)(I)(A) DOES NOT APPLY IN THE EVENT THAT THE ELECTRIC UTILITY
20 PROVES THAT THE ELECTRIC UTILITY'S FAILURE TO COMPLY WAS THE
21 RESULT OF THIRD-PARTY CONDUCT OR AN ACT OF GOD; OR

22 (B) THE ELECTRIC UTILITY ACTED INTENTIONALLY OR WITH GROSS
23 NEGLIGENCE AND THE ELECTRIC UTILITY'S ACTIONS WERE THE ACTUAL
24 AND PROXIMATE CAUSE OF THE PLAINTIFF'S CLAIMED DAMAGES;

25 (II) DAMAGES FOR ECONOMIC LOSSES MUST BE LIMITED TO THE
26 LESSER OF:

27 (A) THE COST TO RESTORE DAMAGED PROPERTY TO THE

1 PROPERTY'S CONDITION BEFORE THE WILDFIRE; OR

2 (B) THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE
3 PROPERTY BEFORE THE WILDFIRE AND THE FAIR MARKET VALUE OF THE
4 PROPERTY AFTER THE WILDFIRE WITHOUT ANY RESTORATION;

5 (III) DAMAGES FOR NONECONOMIC LOSSES MAY ONLY BE
6 RECOVERED IN THE EVENT OF A WILDFIRE-RELATED PHYSICAL INJURY OR
7 DEATH, SUBJECT TO THE RECOVERY LIMITATIONS SET FORTH IN SECTIONS
8 13-21-102.5 AND 13-21-203; AND

9 (IV) PUNITIVE DAMAGES ARE NOT RECOVERABLE UNDER ANY
10 LEGAL THEORY.

11 (b) A PERSON SHALL NOT BRING A COVERED WILDFIRE ACTION
12 AGAINST AN ELECTRIC UTILITY MORE THAN THREE YEARS AFTER THE
13 INITIAL IGNITION OF THE WILDFIRE.

14 (c) THE REMEDIES DESCRIBED IN SUBSECTION (6)(a) OF THIS
15 SECTION ARE THE SOLE REMEDIES THAT MAY BE RECOVERED FOR A
16 COVERED WILDFIRE ACTION.

17 (d) NOTHING IN THIS SECTION LIMITS ANY DEFENSE THAT AN
18 ELECTRIC UTILITY MAY BE ENTITLED TO RAISE IN A COVERED WILDFIRE
19 ACTION.

20 **SECTION 3. Applicability.** This act applies to conduct occurring
21 on or after the effective date of this act.

22 **SECTION 4. Safety clause.** The general assembly finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, or safety or for appropriations for
25 the support and maintenance of the departments of the state and state
26 institutions.