

PROPOSED
SENATE AMENDMENTS TO H.B. 2201
(Reference to House engrossed bill)

Amendment instruction key:
[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.
[Green underlining in brackets] indicates text added to new session law or text restoring existing law.
[GREEN STRIKEOUT IN BRACKETS] indicates new text removed from statute or previously enacted session law.
[Green strikeout in brackets] indicates text removed from existing statute, previously enacted session law or new session law.
<<Green carets>> indicate a section added to the bill.
<<Green strikeout in carets>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 Section 1. Title 30, Arizona Revised Statutes, is amended by adding
3 chapter 7, to read:

4 CHAPTER 7
5 WILDFIRE MITIGATION PLANNING
6 ARTICLE 1. GENERAL PROVISIONS

7 30-901. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ATTACHOR" MEANS ANY CABLE TELEVISION SYSTEM OR PROVIDER OF
10 TELECOMMUNICATIONS OR BROADBAND COMMUNICATION SERVICES THAT OWNS OR
11 OPERATES EQUIPMENT THAT IS ATTACHED TO A POLE, DUCT OR CONDUIT OR THAT IS
12 OTHERWISE LOCATED WITHIN A RIGHT-OF-WAY THAT IS OWNED OR CONTROLLED BY A
13 PUBLIC POWER ENTITY, PROVIDED THAT THE ATTACHING ENTITY IS A CURRENT PARTY
14 TO AND IN COMPLIANCE WITH AN ATTACHMENT AGREEMENT WITH THE PUBLIC POWER
15 ENTITY.

16 2. "ELECTRIC UTILITY" HAS THE SAME MEANING PRESCRIBED IN SECTION
17 40-1301.

18 3. "GOVERNING BODY" MEANS THE GOVERNING BODY OF A PUBLIC POWER
19 ENTITY.

20 4. "PUBLIC POWER ENTITY" MEANS ANY MUNICIPAL CORPORATION OR
21 POLITICAL SUBDIVISION THAT OWNS AND OPERATES FACILITIES THAT GENERATE,
22 TRANSMIT OR DISTRIBUTE ELECTRIC ENERGY FOR SALE TO RETAIL CUSTOMERS IN
23 THIS STATE.

24 5. "PUBLIC SAFETY POWER SHUT OFF" MEANS THE INTENTIONAL TEMPORARY
25 SHUT OFF OF POWER DURING CERTAIN WEATHER OR ENVIRONMENTAL CONDITIONS TO
26 REDUCE THE RISK OF WILDFIRES.

27 6. "WILDFIRE" MEANS ANY UNWANTED, UNPLANNED OR UNCONTROLLED FIRE
28 THAT IGNITES VEGETATION WITHIN A WILDLAND OR NATURAL AREA, INCLUDING:

29 (a) FORESTS.

1 (b) GRASSLANDS.

2 (c) PRAIRIES.

3 (d) ANY AREAS THAT INTERFACE BETWEEN WILDLAND OR NATURAL AND URBAN
4 AREAS.

5 7. "WILDFIRE MITIGATION PLAN" MEANS A PLAN THAT IS SUBMITTED TO THE
6 GOVERNING BODY IN ACCORDANCE WITH THIS CHAPTER.

7 30-902. Cause of action; exclusive means of recovery; legal
8 duty

9 A. THIS CHAPTER DOES NOT ESTABLISH A NEW CAUSE OF ACTION. IF THERE
10 IS A CONFLICT BETWEEN THIS CHAPTER AND ANY OTHER STATE LAW, THIS CHAPTER
11 CONTROLS.

12 B. EXCEPT AS OTHERWISE AGREED TO IN WRITING OR ESTABLISHED BY
13 FEDERAL LAW, THIS CHAPTER ESTABLISHES THE EXCLUSIVE MEANS OF RECOVERY FROM
14 A PUBLIC POWER ENTITY FOR CLAIMS OR DAMAGES THAT RESULT FROM WILDFIRES.

15 C. THIS CHAPTER DOES NOT ESTABLISH ANY ADDITIONAL LEGAL DUTY THAT
16 SUPPORTS ANY CLAIM THAT WOULD NOT OTHERWISE ALREADY EXIST.

17 D. IN ANY CAUSE OF ACTION AGAINST A PARENT, SUBSIDIARY OR OTHER
18 CORPORATE AFFILIATE OF A PUBLIC POWER ENTITY THAT IS RELATED TO A
19 WILDFIRE, THAT PARENT, SUBSIDIARY OR OTHER CORPORATE AFFILIATE OF THE
20 PUBLIC POWER ENTITY SHALL BE TREATED THE SAME AS AND CONSIDERED EQUIVALENT
21 TO A PUBLIC POWER ENTITY FOR THE PURPOSES OF SECTION 30-904.

22 E. IN ANY CAUSE OF ACTION AGAINST A PUBLIC POWER ENTITY THAT IS
23 RELATED TO A WILDFIRE, AN ATTACHOR SHALL BE CONSIDERED TO BE A PUBLIC
24 POWER ENTITY FOR THE PURPOSES OF SECTION 30-904 WITH RESPECT TO ANY
25 LIABILITY THAT MAY BE ALLEGED TO HAVE ARISEN OUT OF THE ATTACHOR'S
26 EQUIPMENT.

27 30-903. Wildfire mitigation plan

28 A. A PUBLIC POWER ENTITY SHALL PREPARE AND SUBMIT A WILDFIRE
29 MITIGATION PLAN TO THE PUBLIC POWER ENTITY'S GOVERNING BODY FOR REVIEW AND
30 APPROVAL. THE PUBLIC POWER ENTITY MAY USE THE SUBMISSION AS AN UPDATE TO
31 THE LAST APPROVED WILDFIRE MITIGATION PLAN. THE [GOVERNING BODY OF A]
32 PUBLIC POWER ENTITY SHALL ~~[SUBMIT THE]~~ ~~[ADOPT A]~~ WILDFIRE MITIGATION PLAN
33 ~~[TO THE PUBLIC POWER ENTITY'S GOVERNING BODY]~~ ON OR BEFORE MAY 1, 2026 AND
34 EVERY EVEN-NUMBERED YEAR THEREAFTER UNLESS THE GOVERNING BODY ORDERS
35 OTHERWISE. ~~[BEFORE A PUBLIC POWER ENTITY SUBMITS A WILDFIRE MITIGATION~~
36 ~~PLAN TO THE GOVERNING BODY, THE PUBLIC POWER ENTITY SHALL CONSULT WITH A~~
37 ~~STATE OR FEDERAL LAND MANAGEMENT OR FIRE PROTECTION AGENCY THAT HAS~~
38 ~~AUTHORITY IN THE PUBLIC POWER ENTITY'S SERVICE TERRITORY, AS APPLICABLE,~~
39 ~~AS TO THE CONTENT OF THE WILDFIRE MITIGATION PLAN.]~~

40 B. THE GOVERNING BODY SHALL REVIEW THE SUBMITTED WILDFIRE
41 MITIGATION PLAN TO ENSURE THAT THE PLAN:

42 1. COMPLIES WITH THIS CHAPTER AND ALL APPLICABLE RULES AND
43 REGULATIONS.

44 2. IS REASONABLE.

45 3. IS IN THE PUBLIC INTEREST.

1 ~~[C. THE GOVERNING BODY MAY REQUEST ADDITIONAL INFORMATION OR A~~
2 ~~MODIFICATION TO THE SUBMITTED WILDFIRE MITIGATION PLAN WITHIN ONE HUNDRED~~
3 ~~TWENTY DAYS AFTER RECEIPT OF THE WILDFIRE MITIGATION PLAN BY PROVIDING~~
4 ~~WRITTEN NOTICE TO THE PUBLIC POWER ENTITY. IF THE GOVERNING BODY DOES NOT~~
5 ~~REQUEST ADDITIONAL INFORMATION OR A MODIFICATION TO THE WILDFIRE~~
6 ~~MITIGATION PLAN, THE WILDFIRE MITIGATION PLAN IS DEEMED ADMINISTRATIVELY~~
7 ~~APPROVED AT THE EXPIRATION OF ONE HUNDRED TWENTY DAYS.~~

8 ~~[C.] [D. WITHIN NINETY DAYS AFTER RECEIPT OF THE NOTICE PRESCRIBED~~
9 ~~IN SUBSECTION C OF THIS SECTION, THE PUBLIC POWER ENTITY SHALL REVISE THE~~
10 ~~PUBLIC POWER ENTITY'S WILDFIRE MITIGATION PLAN TO ADDRESS THE GOVERNING~~
11 ~~BODY'S REQUEST. THE GOVERNING BODY HAS SIXTY DAYS TO CONSIDER THE PUBLIC~~
12 ~~POWER ENTITY'S RESPONSE AND ANY PROPOSED ADDITIONAL INFORMATION OR~~
13 ~~MODIFICATION TO THE WILDFIRE MITIGATION PLAN.] THE WILDFIRE MITIGATION~~
14 ~~PLAN IS DEEMED APPROVED DURING THE PENDENCY OF ANY JUDICIAL ACTION THAT~~
15 ~~SEEKS REVIEW OF THE GOVERNING BODY'S APPROVAL OR REJECTION OF THE WILDFIRE~~
16 ~~MITIGATION PLAN OR ANY PORTION OF THE WILDFIRE MITIGATION PLAN. [IF THE~~
17 ~~GOVERNING BODY DOES NOT REQUEST ADDITIONAL INFORMATION OR A MODIFICATION~~
18 ~~TO THE WILDFIRE MITIGATION PLAN, THE WILDFIRE MITIGATION PLAN IS DEEMED~~
19 ~~ADMINISTRATIVELY APPROVED AT THE EXPIRATION OF SIXTY DAYS.~~

20 ~~[F.] [D.]~~ THE WILDFIRE MITIGATION PLAN SHALL INCLUDE THE FOLLOWING:

21 1. A DESCRIPTION OF AREAS WITHIN THE GEOGRAPHIC REGION WHERE THE
22 PUBLIC POWER ENTITY'S FACILITIES MAY BE SUBJECT TO A HEIGHTENED RISK OF
23 WILDFIRE.

24 2. A DESCRIPTION OF THE PROCEDURES AND STANDARDS THAT THE PUBLIC
25 POWER ENTITY WILL USE TO INSPECT AND OPERATE THE PUBLIC POWER ENTITY'S
26 INFRASTRUCTURE TO MITIGATE THE RISK OF WILDFIRES.

27 3. A DESCRIPTION OF THE KEY INDIVIDUALS OR POSITION TITLES OF THOSE
28 PERSONS WHO ARE RESPONSIBLE FOR IMPLEMENTING THE WILDFIRE MITIGATION PLAN.

29 4. A DESCRIPTION OF PROCEDURES FOR DEENERGIZING POWER LINES AND
30 DISABLING RECLOSERS TO MITIGATE POTENTIAL WILDFIRES OR PROVIDE A PUBLIC
31 SAFETY POWER SHUT OFF PLAN.

32 5. A PLAN FOR VEGETATION MANAGEMENT.

33 6. A SUMMARY OF THE PROCEDURES THE PUBLIC POWER ENTITY INTENDS TO
34 USE TO RESTORE THE PUBLIC POWER ENTITY'S ELECTRICAL SYSTEM IN THE EVENT OF
35 A WILDFIRE.

36 7. A DESCRIPTION OF COMMUNITY OUTREACH AND PUBLIC AWARENESS
37 EFFORTS.

38 8. A DESCRIPTION OF POTENTIAL PARTICIPATION, IF APPLICABLE, WITH
39 STATE OR LOCAL WILDFIRE PROTECTION EFFORTS.

40 9. A DESCRIPTION OF HOW THE PUBLIC POWER ENTITY WILL MONITOR
41 COMPLIANCE WITH THE WILDFIRE MITIGATION PLAN.

42 ~~[F.] [E.]~~ A PUBLIC POWER ENTITY MAY REFERENCE PROCEDURES AND
43 STANDARDS THAT ARE NOT SPECIFICALLY ENUMERATED IN THE WILDFIRE MITIGATION
44 PLAN IN LIEU OF THE REQUIREMENTS UNDER SUBSECTION ~~[F.] [D.]~~ OF THIS

1 SECTION. REFERENCED MATERIAL MUST BE INCLUDED AS ATTACHMENTS TO THE
2 WILDFIRE MITIGATION PLAN SUBMISSION.

3 30-904. Liability for causing wildfires; severability

4 A. FOR ANY CAUSE OF ACTION [FOR NEGLIGENCE] AGAINST A PUBLIC POWER
5 ENTITY THAT IS RELATED TO A WILDFIRE, ~~[ALL OF THE ELEMENTS MUST BE PROVEN~~
6 ~~BY CLEAR AND CONVINCING EVIDENCE.]~~

7 ~~B.]~~ A PUBLIC POWER ENTITY THAT [SUBSTANTIALLY] ACTS IN COMPLIANCE
8 WITH ~~[THE APPROVED]~~ [A] WILDFIRE MITIGATION PLAN [THAT IS APPROVED
9 PURSUANT TO SECTIONS 30-903 AND 37-1311] IS DEEMED TO MEET THE STANDARD OF
10 CARE FOR A REASONABLY PRUDENT PUBLIC POWER ENTITY ~~[UNLESS THERE IS CLEAR~~
11 ~~AND CONVINCING EVIDENCE OF WILFUL, INTENTIONAL OR RECKLESS MISCONDUCT].~~
12 [A PARTY THAT ASSERTS A CAUSE OF ACTION SHALL PROVE THAT A FAILURE TO
13 COMPLY WITH THE APPROVED WILDFIRE MITIGATION PLAN WAS THE PROXIMATE CAUSE
14 OF ANY LOSS, INJURY OR OTHER HARM ALLEGED.]

15 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A PUBLIC POWER
16 ENTITY THAT ENGAGES IN WILFUL, INTENTIONAL OR RECKLESS MISCONDUCT THAT
17 CAUSES A WILDFIRE IS DEEMED TO NOT MEET THE STANDARD OF CARE FOR A
18 REASONABLY PRUDENT PUBLIC POWER ENTITY.] A FAILURE TO COMPLY WITH AN
19 APPROVED WILDFIRE MITIGATION PLAN DOES NOT CONSTITUTE NEGLIGENCE PER SE.
20 A PUBLIC POWER ENTITY'S OR ELECTRIC UTILITY'S WILDFIRE MITIGATION PLAN
21 SHALL NOT BE ADMISSIBLE AS EVIDENCE AGAINST ANOTHER PUBLIC POWER ENTITY OR
22 ELECTRIC UTILITY IN A CIVIL ACTION THAT AROSE OUT OF A WILDFIRE.

23 C. A PUBLIC POWER ENTITY SHALL NOT BE APPORTIONED ANY [PROPORTION
24 OF] FAULT FOR THE IGNITION OF A WILDFIRE FROM SOURCES THAT ARE OUTSIDE OF
25 THE PUBLIC POWER ENTITY'S CONTROL, INCLUDING LIGHTNING STRIKES OR ACTIONS
26 BY THIRD PARTIES.

27 D. A PUBLIC POWER ENTITY SHALL NOT BE APPORTIONED ANY [PROPORTION
28 OF] FAULT FOR VEGETATION OR OTHER WILDFIRE RISKS OUTSIDE OF THE PUBLIC
29 POWER ENTITY'S RIGHT-OF-WAY, LEASE OR OTHER PROPERTY RIGHTS OR AREAS IN
30 WHICH THE PUBLIC POWER ENTITY HAS BEEN DELAYED IN ACCESSING OR DENIED
31 ACCESS TO FOR PURPOSES OF PERFORMING VEGETATION MANAGEMENT [IF THE DELAY
32 OR DENIAL IS OUTSIDE OF THE PUBLIC POWER ENTITY'S REASONABLE CONTROL].

33 E. A CLAIM FOR CONDEMNATION OR INVERSE CONDEMNATION SHALL NOT EXIST
34 AGAINST A PUBLIC POWER ENTITY RELATED TO WILDFIRES.

35 F. IN AN ACTION ~~[PURSUANT TO THIS SECTION]~~ [AGAINST A PUBLIC POWER
36 ENTITY] TO RECOVER ANY DAMAGES THAT RESULT FROM A WILDFIRE, NEITHER
37 ~~[CONSEQUENTIAL PROPERTY DAMAGES NOR]~~ EXEMPLARY ~~[OR]~~ [NOR] PUNITIVE ~~[BODILY~~
38 ~~INJURY OR PROPERTY]~~ DAMAGES [OF ANY KIND] SHALL BE RECOVERED.

39 G. IF ANY PROVISION OF THIS CHAPTER OR THE PUBLIC POWER ENTITY'S
40 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY
41 DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS CHAPTER THAT CAN
42 BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION AND TO THIS
43 END THE PROVISIONS OF THIS CHAPTER ARE SEVERABLE.

1 <<Sec. 2. Title 37, chapter 9, article 1, Arizona Revised Statutes,
2 is amended by adding section 37-1311, to read:

3 37-1311. Wildfire mitigation plan

4 [A. THE STATE FORESTER SHALL REVIEW AND APPROVE A SUBMITTED
5 WILDFIRE MITIGATION PLAN THAT:

6 1. COMPLIES WITH TITLE 30, CHAPTER 7, ARTICLE 1 AND ALL APPLICABLE
7 RULES.

8 2. IS REASONABLE.

9 3. IS IN THE PUBLIC INTEREST.

10 4. MEETS THE REQUIREMENTS OF SUBSECTION E OF THIS SECTION.

11 5. IS DESIGNED TO MEET THE SPECIFIC CONDITIONS AND RISK OF THE
12 PUBLIC POWER ENTITY'S SERVICE AREA IN WHICH IT OPERATES.

13 B. THE STATE FORESTER SHALL PROVIDE PUBLIC NOTICE AND AN
14 OPPORTUNITY FOR PUBLIC COMMENT ON A SUBMITTED WILDFIRE MITIGATION PLAN.
15 THE STATE FORESTER SHALL PUBLISH THE NOTICE ON THE DEPARTMENT OF FORESTRY
16 AND FIRE MANAGEMENT'S WEBSITE AND IN THE ARIZONA ADMINISTRATIVE REGISTER
17 AND A HOLD PUBLIC HEARING NOT LESS THAN FOURTEEN DAYS BUT NOT MORE THAN
18 THIRTY DAYS AFTER THE WILDFIRE MITIGATION PLAN IS SUBMITTED.

19 C. THE STATE FORESTER MAY REQUEST ADDITIONAL INFORMATION OR REQUEST
20 MODIFICATION TO THE SUBMITTED WILDFIRE MITIGATION PLAN WITHIN FORTY-FIVE
21 DAYS AFTER THE INITIAL RECEIPT OF THE WILDFIRE MITIGATION PLAN BY
22 PROVIDING WRITTEN NOTICE TO A PUBLIC POWER ENTITY.

23 D. WITHIN NINETY DAYS AFTER RECEIPT OF THE NOTICE AS PRESCRIBED IN
24 SUBSECTION C OF THIS SECTION, THE PUBLIC POWER ENTITY SHALL RESPOND TO THE
25 STATE FORESTER'S REQUEST FOR INFORMATION AND MAY REVISE OR WITHDRAW THE
26 PUBLIC POWER ENTITY'S WILDFIRE MITIGATION PLAN IF NECESSARY. THE STATE
27 FORESTER, WITHIN THIRTY DAYS AFTER RECEIPT OF THE RESPONSE OR REVISED
28 WILDFIRE MITIGATION PLAN, WHICHEVER IS LATER, SHALL ISSUE A FINAL DECISION
29 REGARDING THE APPROVAL OR DISAPPROVAL OF THE WILDFIRE MITIGATION PLAN.

30 E. THE WILDFIRE MITIGATION PLAN SHALL INCLUDE THE FOLLOWING:

31 1. A DESCRIPTION OF AREAS WITHIN THE GEOGRAPHIC REGION WHERE THE
32 PUBLIC POWER ENTITY'S FACILITIES MAY BE SUBJECT TO A HEIGHTENED RISK OF
33 WILDFIRE.

34 2. A DESCRIPTION OF THE PROCEDURES AND STANDARDS THAT THE PUBLIC
35 POWER ENTITY WILL USE TO INSPECT AND OPERATE THE PUBLIC POWER ENTITY'S
36 INFRASTRUCTURE TO MITIGATE THE RISK OF WILDFIRES.

37 3. A DESCRIPTION OF THE KEY INDIVIDUALS OR POSITION TITLES OF THOSE
38 PERSONS WHO ARE RESPONSIBLE FOR IMPLEMENTING THE WILDFIRE MITIGATION PLAN.

39 4. A DESCRIPTION OF THE PROCEDURES FOR DEENERGIZING POWER LINES AND
40 DISABLING RECLOSERS TO MITIGATE POTENTIAL WILDFIRES OR PROVIDE A PUBLIC
41 SAFETY POWER SHUT OFF PLAN.

42 5. A PLAN FOR VEGETATION MANAGEMENT.

43 6. A SUMMARY OF THE PROCEDURES THE PUBLIC POWER ENTITY INTENDS TO
44 USE TO RESTORE THE PUBLIC POWER ENTITY'S ELECTRICAL SYSTEM IN THE EVENT OF
45 A WILDFIRE.

1 7. A DESCRIPTION OF COMMUNITY OUTREACH AND PUBLIC AWARENESS
2 EFFORTS.

3 8. A DESCRIPTION OF POTENTIAL PARTICIPATION, IF APPLICABLE, WITH
4 STATE OR LOCAL WILDFIRE PROTECTION EFFORTS.

5 9. A DESCRIPTION OF HOW THE PUBLIC POWER ENTITY WILL MONITOR
6 COMPLIANCE WITH THE WILDFIRE MITIGATION PLAN.

7 F. A PUBLIC POWER ENTITY MAY REFERENCE PROCEDURES AND STANDARDS
8 THAT ARE NOT SPECIFICALLY ENUMERATED IN THE WILDFIRE MITIGATION PLAN IN
9 LIEU OF THE REQUIREMENTS PRESCRIBED IN SUBSECTION E OF THIS SECTION.
10 REFERENCED MATERIAL SHALL BE INCLUDED AS ATTACHMENTS TO THE WILDFIRE
11 MITIGATION PLAN SUBMISSION.

12 G. ON THE EVALUATION OF A WILDFIRE MITIGATION PLAN, THE STATE
13 FORESTER MAY NOT CONSIDER ANOTHER WILDFIRE MITIGATION PLAN AS A BASIS FOR
14 SUGGESTED MODIFICATION OR DISAPPROVAL OF THE PLAN.]>>

15 Sec. 3. Title 40, Arizona Revised Statutes, is amended by adding
16 chapter 8, to read:

17 CHAPTER 8

18 WILDFIRE MITIGATION PLANNING

19 ARTICLE 1. GENERAL PROVISIONS

20 40-1301. Definitions

21 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

22 1. "ATTACHOR" MEANS ANY CABLE TELEVISION SYSTEM OR PROVIDER OF
23 TELECOMMUNICATIONS OR BROADBAND COMMUNICATION SERVICES THAT OWNS OR
24 OPERATES EQUIPMENT THAT IS ATTACHED TO A POLE, DUCT OR CONDUIT OR THAT IS
25 OTHERWISE LOCATED WITHIN A RIGHT-OF-WAY THAT IS OWNED OR CONTROLLED BY AN
26 ELECTRIC UTILITY, PROVIDED THAT THE ATTACHING ENTITY IS A CURRENT PARTY TO
27 AND IN COMPLIANCE WITH AN ATTACHMENT AGREEMENT WITH THE ELECTRIC UTILITY.

28 2. "COMMISSION" MEANS THE CORPORATION COMMISSION.

29 3. "ELECTED BOARD" MEANS THE GOVERNING BODY OF AN ELECTRIC UTILITY
30 THAT IS SELECTED BY VOTERS OR MEMBERS OF AN ELECTRIC COOPERATIVE IN AN
31 ELECTION.

32 4. "ELECTRIC UTILITY":

33 (a) MEANS:

34 (i) ANY PERSON, BUSINESS ORGANIZATION, PUBLIC SERVICE CORPORATION,
35 ELECTRIC COOPERATIVE OR OTHER LEGAL ENTITY THAT OWNS AND OPERATES
36 FACILITIES FOR THE GENERATION, TRANSMISSION OR DISTRIBUTION OF ELECTRIC
37 ENERGY FOR SALE TO RETAIL CUSTOMERS IN THIS STATE.

38 (ii) ANY GENERATION AND TRANSMISSION COOPERATIVE OPERATING IN THIS
39 STATE.

40 (b) DOES NOT INCLUDE A PUBLIC POWER ENTITY.

41 5. "PUBLIC POWER ENTITY" MEANS A PUBLIC POWER ENTITY AS DEFINED IN
42 SECTION 30-901.

43 6. "PUBLIC SAFETY POWER SHUT OFF" MEANS THE INTENTIONAL TEMPORARY
44 SHUT OFF OF POWER DURING CERTAIN WEATHER OR ENVIRONMENTAL CONDITIONS TO
45 REDUCE THE RISK OF WILDFIRES.

1 7. "WILDFIRE" MEANS ANY UNWANTED, UNPLANNED OR UNCONTROLLED FIRE
2 THAT IGNITES VEGETATION WITHIN A WILDLAND OR NATURAL AREA, INCLUDING:

3 (a) FORESTS.

4 (b) GRASSLANDS.

5 (c) PRAIRIES.

6 (d) ANY AREAS THAT INTERFACE BETWEEN WILDLAND OR NATURAL AND URBAN
7 AREAS.

8 8. "WILDFIRE MITIGATION PLAN" MEANS A PLAN THAT IS SUBMITTED TO THE
9 COMMISSION OR ELECTED BOARD IN ACCORDANCE WITH THIS CHAPTER.

10 40-1302. Cause of action; exclusive means of recovery; legal
11 duty

12 A. THIS CHAPTER DOES NOT ESTABLISH A NEW CAUSE OF ACTION. IF THERE
13 IS A CONFLICT BETWEEN THIS CHAPTER AND ANY OTHER STATE LAW, THIS CHAPTER
14 CONTROLS.

15 B. EXCEPT AS OTHERWISE AGREED TO IN WRITING OR ESTABLISHED BY
16 FEDERAL LAW, THIS CHAPTER ESTABLISHES THE EXCLUSIVE MEANS OF RECOVERY FROM
17 AN ELECTRIC UTILITY FOR CLAIMS OR DAMAGES THAT RESULT FROM WILDFIRES.

18 C. THIS CHAPTER DOES NOT ESTABLISH ANY ADDITIONAL LEGAL DUTY THAT
19 SUPPORTS ANY CLAIM THAT WOULD NOT OTHERWISE ALREADY EXIST.

20 D. IN ANY CAUSE OF ACTION AGAINST A PARENT, SUBSIDIARY OR OTHER
21 CORPORATE AFFILIATE OF AN ELECTRIC UTILITY THAT IS RELATED TO A WILDFIRE,
22 THAT PARENT, SUBSIDIARY OR OTHER CORPORATE AFFILIATE OF THE ELECTRIC
23 UTILITY SHALL BE TREATED THE SAME AS AND CONSIDERED EQUIVALENT TO AN
24 ELECTRIC UTILITY FOR THE PURPOSES OF SECTION 40-1304.

25 E. IN ANY CAUSE OF ACTION AGAINST AN ELECTRIC UTILITY THAT IS
26 RELATED TO A WILDFIRE, ANY ATTACHOR SHALL BE CONSIDERED TO BE AN ELECTRIC
27 UTILITY FOR THE PURPOSES OF SECTION 40-1304 WITH RESPECT TO ANY LIABILITY
28 THAT MAY BE ALLEGED TO HAVE ARISEN OUT OF THE ATTACHOR'S EQUIPMENT.

29 [F. ANY ACTION BY THE COMMISSION PURSUANT TO THIS CHAPTER IS THE
30 EXERCISE OF AN ADMINISTRATIVE FUNCTION INVOLVING THE DETERMINATION OF
31 FUNDAMENTAL GOVERNMENTAL POLICY PURSUANT TO SECTION 12-820.01.]

32 40-1303. Wildfire mitigation plan

33 A. EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION, AN ELECTRIC
34 UTILITY SHALL PREPARE AND SUBMIT A WILDFIRE MITIGATION PLAN TO THE
35 COMMISSION FOR REVIEW AND APPROVAL. THE ELECTRIC UTILITY MAY USE THE
36 SUBMISSION AS AN UPDATE TO THE LAST APPROVED WILDFIRE MITIGATION PLAN.
37 THE ELECTRIC UTILITY SHALL SUBMIT THE WILDFIRE MITIGATION PLAN TO THE
38 COMMISSION ON OR BEFORE MAY 1, 2026 AND EVERY EVEN-NUMBERED YEAR
39 THEREAFTER. BEFORE AN ELECTRIC UTILITY SUBMITS A WILDFIRE MITIGATION PLAN
40 TO THE COMMISSION, THE ELECTRIC UTILITY SHALL CONSULT WITH A STATE OR
41 FEDERAL LAND MANAGEMENT OR FIRE PROTECTION AGENCY THAT HAS AUTHORITY IN
42 THE ELECTRIC UTILITY'S SERVICE TERRITORY, AS APPLICABLE, AS TO THE CONTENT
43 OF THE WILDFIRE MITIGATION PLAN.

44 B. THE COMMISSION SHALL REVIEW THE SUBMITTED WILDFIRE MITIGATION
45 PLAN TO ENSURE THAT THE PLAN:

1 1. COMPLIES WITH THIS CHAPTER AND ALL APPLICABLE RULES AND
2 REGULATIONS.
3 2. IS REASONABLE.
4 3. IS IN THE PUBLIC INTEREST.
5 C. THE COMMISSION MAY REQUEST ADDITIONAL INFORMATION OR A
6 MODIFICATION TO THE SUBMITTED WILDFIRE MITIGATION PLAN WITHIN ONE HUNDRED
7 TWENTY DAYS AFTER RECEIPT OF THE WILDFIRE MITIGATION PLAN BY PROVIDING
8 WRITTEN NOTICE TO THE ELECTRIC UTILITY. IF THE COMMISSION DOES NOT
9 REQUEST ADDITIONAL INFORMATION OR A MODIFICATION TO THE WILDFIRE
10 MITIGATION PLAN, THE WILDFIRE MITIGATION PLAN IS DEEMED ADMINISTRATIVELY
11 APPROVED AT THE EXPIRATION OF ONE HUNDRED TWENTY DAYS.
12 D. WITHIN NINETY DAYS AFTER RECEIPT OF THE NOTICE PRESCRIBED IN
13 SUBSECTION C OF THIS SECTION, THE ELECTRIC UTILITY SHALL REVISE THE
14 ELECTRIC UTILITY'S WILDFIRE MITIGATION PLAN TO ADDRESS THE COMMISSION'S
15 REQUEST. THE COMMISSION HAS SIXTY DAYS TO CONSIDER THE ELECTRIC UTILITY'S
16 RESPONSE AND ANY PROPOSED ADDITIONAL INFORMATION OR MODIFICATION TO THE
17 WILDFIRE MITIGATION PLAN. THE WILDFIRE MITIGATION PLAN IS DEEMED APPROVED
18 DURING THE PENDENCY OF ANY JUDICIAL ACTION THAT SEEKS REVIEW OF THE
19 COMMISSION'S APPROVAL OR REJECTION OF THE WILDFIRE MITIGATION PLAN OR ANY
20 PORTION OF THE WILDFIRE MITIGATION PLAN. IF THE COMMISSION DOES NOT
21 REQUEST ADDITIONAL INFORMATION OR A MODIFICATION TO THE WILDFIRE
22 MITIGATION PLAN, THE WILDFIRE MITIGATION PLAN IS DEEMED ADMINISTRATIVELY
23 APPROVED AT THE EXPIRATION OF SIXTY DAYS.
24 E. THE WILDFIRE MITIGATION PLAN SHALL INCLUDE THE FOLLOWING:
25 1. A DESCRIPTION OF AREAS WITHIN THE GEOGRAPHIC REGION WHERE THE
26 UTILITIES FACILITIES MAY BE SUBJECT TO A HEIGHTENED RISK OF WILDFIRE.
27 2. A DESCRIPTION OF THE PROCEDURES AND STANDARDS THAT THE ELECTRIC
28 UTILITY WILL USE TO INSPECT AND OPERATE THE ELECTRIC UTILITY'S
29 INFRASTRUCTURE TO MITIGATE THE RISK OF WILDFIRES.
30 3. A DESCRIPTION OF THE KEY INDIVIDUALS OR POSITION TITLES OF THOSE
31 PERSONS WHO ARE RESPONSIBLE FOR IMPLEMENTING THE WILDFIRE MITIGATION PLAN.
32 4. A DESCRIPTION OF PROCEDURES FOR DEENERGIZING POWER LINES AND
33 DISABLING RECLOSERS TO MITIGATE POTENTIAL WILDFIRES OR PROVIDE A PUBLIC
34 SAFETY POWER SHUT OFF PLAN.
35 5. A PLAN FOR VEGETATION MANAGEMENT.
36 6. A SUMMARY OF THE PROCEDURES THE ELECTRIC UTILITY INTENDS TO USE
37 TO RESTORE THE ELECTRIC UTILITY'S ELECTRICAL SYSTEM IN THE EVENT OF A
38 WILDFIRE.
39 7. A DESCRIPTION OF COMMUNITY OUTREACH AND PUBLIC AWARENESS
40 EFFORTS.
41 8. A DESCRIPTION OF POTENTIAL PARTICIPATION, IF APPLICABLE, WITH
42 STATE OR LOCAL WILDFIRE PROTECTION EFFORTS.
43 9. A DESCRIPTION OF HOW THE ELECTRIC UTILITY WILL MONITOR
44 COMPLIANCE WITH THE WILDFIRE MITIGATION PLAN.

1 F. AN ELECTRIC UTILITY MAY REFERENCE PROCEDURES AND STANDARDS THAT
2 ARE NOT SPECIFICALLY ENUMERATED IN THE WILDFIRE MITIGATION PLAN IN LIEU OF
3 THE REQUIREMENTS UNDER SUBSECTION E OF THIS SECTION. REFERENCED MATERIAL
4 MUST BE INCLUDED AS ATTACHMENTS TO THE WILDFIRE MITIGATION PLAN
5 SUBMISSION.

6 G. ON OR BEFORE MAY 1, 2026 AND EVERY EVEN-NUMBERED YEAR THEREAFTER
7 UNLESS AN ELECTRIC UTILITY'S GOVERNING BOARD ORDERS OTHERWISE, AN ELECTRIC
8 UTILITY THAT IS GOVERNED BY AN ELECTED BOARD SHALL SUBMIT A COPY OF THE
9 ELECTRIC UTILITY'S WILDFIRE MITIGATION PLAN TO THE ELECTED BOARD, INSTEAD
10 OF THE COMMISSION, FOR REVIEW AND APPROVAL. THE ELECTED BOARD SHALL
11 REPLACE THE ROLE OF THE COMMISSION FOR THE PURPOSES OF THIS SECTION.
12 BEFORE AN ELECTRIC UTILITY SUBMITS A WILDFIRE MITIGATION PLAN TO THE
13 ELECTED BOARD, THE ELECTRIC UTILITY SHALL CONSULT WITH A STATE OR FEDERAL
14 LAND MANAGEMENT OR FIRE PROTECTION AGENCY THAT HAS AUTHORITY IN THE
15 ELECTRIC UTILITY'S SERVICE TERRITORY, AS APPLICABLE, AS TO THE CONTENT OF
16 THE WILDFIRE MITIGATION PLAN.

17 [H. THE COMMISSION MAY ADOPT RULES TO IMPLEMENT THE COMMISSION'S
18 PROCESS FOR THE REVIEW AND APPROVAL OF WILDFIRE MITIGATION PLANS.

19 I. THE COMMISSION OR ELECTED BOARD ACTION THAT APPROVES A WILDFIRE
20 MITIGATION PLAN SHALL NOT BE CONSIDERED APPROVED FOR RECOVERY OF THE
21 ELECTRIC UTILITY'S COSTS NECESSARY TO IMPLEMENT THE WILDFIRE MITIGATION
22 PLAN THROUGH RATES FOR SERVICE CHARGED TO THE ELECTRIC UTILITY'S
23 CUSTOMERS.]

24 40-1304. Liability for causing wildfires; severability

25 A. FOR ANY CAUSE OF ACTION [FOR NEGLIGENCE] AGAINST AN ELECTRIC
26 UTILITY THAT IS RELATED TO A WILDFIRE, ~~[ALL OF THE ELEMENTS MUST BE PROVEN~~
27 ~~BY CLEAR AND CONVINCING EVIDENCE.]~~

28 ~~B.]~~ AN ELECTRIC UTILITY THAT [SUBSTANTIALLY] ACTS IN COMPLIANCE
29 WITH THE APPROVED WILDFIRE MITIGATION PLAN IS DEEMED TO MEET THE STANDARD
30 OF CARE FOR A REASONABLY PRUDENT ELECTRIC UTILITY ~~[UNLESS THERE IS CLEAR~~
31 ~~AND CONVINCING EVIDENCE OF WILFUL, INTENTIONAL OR RECKLESS MISCONDUCT].~~
32 [A PARTY THAT ASSERTS A CAUSE OF ACTION FOR NEGLIGENCE SHALL PROVE THAT A
33 FAILURE TO COMPLY WITH THE APPROVED WILDFIRE MITIGATION PLAN WAS THE
34 PROXIMATE CAUSE OF ANY LOSS, INJURY OR OTHER HARM ALLEGED.]

35 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, AN ELECTRIC
36 UTILITY THAT ENGAGES IN WILFUL, INTENTIONAL OR RECKLESS MISCONDUCT THAT
37 CAUSES A WILDFIRE IS NOT DEEMED TO MEET THE STANDARD OF CARE FOR A
38 REASONABLY PRUDENT ELECTRIC UTILITY.] A FAILURE TO COMPLY WITH AN
39 APPROVED WILDFIRE MITIGATION PLAN DOES NOT CONSTITUTE NEGLIGENCE PER SE.
40 A PUBLIC POWER ENTITY'S OR ELECTRIC UTILITY'S WILDFIRE MITIGATION PLAN
41 SHALL NOT BE ADMISSIBLE AS EVIDENCE AGAINST ANOTHER PUBLIC POWER ENTITY OR
42 ELECTRIC UTILITY IN A CIVIL ACTION THAT AROSE OUT OF A WILDFIRE.

43 C. AN ELECTRIC UTILITY SHALL NOT BE APPORTIONED ANY [PROPORTION OF]
44 FAULT FOR THE IGNITION OF A WILDFIRE FROM SOURCES THAT ARE OUTSIDE OF THE

1 ELECTRIC UTILITY'S CONTROL, INCLUDING LIGHTNING STRIKES OR ACTIONS BY
2 THIRD PARTIES.

3 D. AN ELECTRIC UTILITY SHALL NOT BE APPORTIONED ANY [PROPORTION OF]
4 FAULT FOR VEGETATION OR OTHER WILDFIRE RISKS OUTSIDE OF THE ELECTRIC
5 UTILITY'S RIGHT-OF-WAY, LEASE OR OTHER PROPERTY RIGHTS OR AREAS IN WHICH
6 THE ELECTRIC UTILITY HAS BEEN DELAYED IN ACCESSING OR DENIED ACCESS TO FOR
7 PURPOSES OF PERFORMING VEGETATION MANAGEMENT [IF THE DELAY OR DENIAL IS
8 OUTSIDE OF THE ELECTRIC UTILITY'S REASONABLE CONTROL].

9 E. A CLAIM FOR CONDEMNATION OR INVERSE CONDEMNATION SHALL NOT EXIST
10 AGAINST AN ELECTRIC UTILITY RELATED TO WILDFIRES.

11 F. IN AN ACTION ~~[PURSUANT TO THIS SECTION]~~ [AGAINST AN ELECTRIC
12 UTILITY] TO RECOVER ANY DAMAGES THAT RESULT FROM A WILDFIRE, NEITHER
13 ~~[CONSEQUENTIAL PROPERTY DAMAGES NOR]~~ EXEMPLARY ~~[OR]~~ ~~[NOR]~~ PUNITIVE ~~[BODILY~~
14 ~~INJURY OR PROPERTY]~~ DAMAGES [OF ANY KIND] SHALL BE RECOVERED.

15 G. IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY
16 PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT
17 OTHER PROVISIONS OR APPLICATIONS OF THIS CHAPTER THAT CAN BE GIVEN EFFECT
18 WITHOUT THE INVALID PROVISION OR APPLICATION AND TO THIS END THE
19 PROVISIONS OF THIS CHAPTER ARE SEVERABLE.

20 Enroll and engross to conform

21 Amend title to conform

J.D. MESNARD

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