

1 HOUSE BILL NO. 490  
2 INTRODUCED BY A. REGIER, G. OBLANDER, K. ZOLNIKOV, T. FRANCE  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO WILDFIRES AND  
5 UTILITIES; ~~ALLOWING~~ REQUIRING CERTAIN ENTITIES TO ~~SUBMIT AN APPROVED~~ PREPARE A  
6 WILDFIRE MITIGATION PLAN; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR THE  
7 WILDFIRE MITIGATION PLAN; PROVIDING FOR APPROVAL OF THE WILDFIRE MITIGATION PLAN;  
8 REQUIRING UPDATED REPORTS RELATING TO THE WILDFIRE MITIGATION PLAN AND SUBMISSION  
9 OF AN UPDATED WILDFIRE MITIGATION PLAN; PROVIDING THAT CERTAIN ENTITIES THAT HAVE  
10 ~~FILED A SUBSTANTIALLY FOLLOWED AN APPROVED~~ WILDFIRE MITIGATION PLAN ~~ARE MAY NOT BE~~  
11 ~~CIVILLY LIABLE~~ ARE AFFORDED CERTAIN CIVIL LIABILITY PROTECTIONS FOR INJURY OR DAMAGES  
12 CAUSED BY WILDFIRE; REVISING THE STANDARD OF CARE RELATING TO CERTAIN ENTITIES AND  
13 WILDFIRE; PROVIDING RULEMAKING AUTHORITY TO THE PUBLIC SERVICE COMMISSION RELATING  
14 TO WILDFIRE MITIGATION PLANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15  
16 WHEREAS, the Legislature finds that electric facilities providers of Montana have an obligation to serve  
17 customers and extend services, which is different from typical businesses, and that they provide a necessary  
18 and beneficial public service for the supply, transmission, and delivery of electricity to the people of Montana as  
19 well as a fundamental basis of economic growth and development of all sectors of Montana's economy; and

20 WHEREAS, there is a growing threat of wildfires in the United States and within the state of Montana;

21 and

22 WHEREAS, in recognition of electric facilities providers' obligation to serve their customers and in order  
23 to secure and sustain Montana's reliable provision of electricity and services associated with it at just and  
24 reasonable rates, electric facilities providers must be encouraged and have the right to deliver and transmit  
25 electricity throughout the state without fear or risk of being held strictly liable for wildfire losses under the  
26 common law theory of ultrahazardous activity or being held liable for wildfires caused by factors beyond their  
27 control; and

28 THEREFORE, the intent of the Legislature to protect electric facilities providers from strict liability and

~~commission for a regulated utility shall identify any deficiencies in a wildfire mitigation plan and provide written comments addressing whether the wildfire mitigation plan is reasonable, is in the public interest, and reasonably balances the incremental costs of implementing the plan with the risk of a potential wildfire.~~

~~(6)(7) If an electric facilities provider prepares a wildfire mitigation plan in accordance with this section, NO LATER THAN JUNE 1 OF EACH YEAR, the electric facilities provider shall submit to its governing body APPROVAL AUTHORITY a biennial report summarizing the electric facilities provider's wildfire mitigation efforts and compliance with the ITS CURRENTLY AUTHORIZED wildfire mitigation plan.~~

~~(7)(8) In accordance with the Montana Administrative Procedure Act, the commission may make any necessary rules establishing procedures for the review and comment on a regulated utility's wildfire mitigation plan, including for the appointment of a technical master to determine whether the wildfire mitigation plan contains the required components in subsection (2).~~

~~(9) NOTHING IN THIS SECTION MAY BE CONSTRUED TO CREATE A NEW LIABILITY, BASIS FOR CLAIM, OR SEPARATE LEGAL CAUSE OF ACTION ARISING FROM THE REVIEW OR APPROVAL OF A WILDFIRE MITIGATION PLAN WHEN NONE WOULD EXIST OTHERWISE.~~

**NEW SECTION. Section 3. Electric facilities provider -- wildfire -- cause of action -- standard of care -- damages.** (1) The purpose of this section is to set statutory criteria governing the civil liability of an electric facilities provider for wildfire-related claims. An electric facilities provider has an obligation to serve the public, and a standard of strict liability may not be applied to an electric facilities provider as follows:

(a) in a cause of action alleging the electric facilities provider's electric facilities or electric transmission and distribution activities caused wildfire-related damages; or

(b) in a cause of action alleging an electric facilities provider's wildfire mitigation activities conducted in accordance with a wildfire mitigation plan caused damages.

(2) An electric facilities provider may be found civilly liable only under the provisions of this section, and may not be found civilly liable under any other statute, theory of recovery, or common law claim, for wildfire-related injury or damages arising from the electric facilities provider's electric facilities or electric transmission and distribution activities or for injury or damages arising from any act or omission of the electric facilities provider associated with implementing a wildfire mitigation plan.

(3) An electric facilities provider may be found civilly liable for:

(A) wildfire-related injury or damages arising from the electric facilities provider's electric facilities or electric transmission and distribution activities; or for

(B) injury or damages arising from an act or omission of the electric facilities provider associated with implementing a wildfire mitigation plan only if the party seeking recovery establishes:

(a)(i) the electric facilities provider failed to exercise the degree of care, skill, and learning expected of a reasonable, similarly situated electric facilities provider at the time in the state, acting under the same or similar circumstances; and

(b)(ii) the failure was an actual and THE proximate cause of the injury to person or property for which recovery is sought.

(4) AFTER AN ELECTRIC FACILITIES PROVIDER HAS COMMENCED IMPLEMENTATION OF ITS WILDFIRE MITIGATION PLAN, IN ~~an action against an electric facilities provider seeking wildfire-related damages arising from the electric facilities provider's electric facilities or electric transmission and distribution activities, there is a rebuttable presumption that the electric facilities provider acted reasonably if the provider may argue that it acted reasonably,~~ WITH RESPECT TO THE PLACE OF THE WILDFIRE'S IGNITION, if ~~the electric facilities provider has adopted and, with respect to the place of the wildfire's ignition, substantially followed a wildfire mitigation plan that contains at a minimum the elements in [section 2(2)] WAS APPROVED IN ACCORDANCE WITH [SECTION 2], provided that evidence related to the electric facilities provider's actual incremental costs associated with implementing a wildfire mitigation plan may not be considered in determining whether the electric facilities provider substantially followed its wildfire mitigation plan. The presumption in this subsection (4) may be controverted by other evidence.~~

~~(5) In an action against an electric facilities provider seeking wildfire-related damages arising from the electric facilities provider's electric facilities or electric transmission and distribution activities, the absence of a wildfire mitigation plan may not be construed as evidence of or an inference that the electric facilities provider did not meet the standard in subsection (3)(a), and the fact finder may consider only acts that may have caused the wildfire's ignition and evaluate the electric facilities provider's acts and electric transmission and distribution activities in the context of the electric facilities provider's overall systems, processes, and programs.~~

~~(6)~~(5) In an action against an electric facilities provider under this section, if a plaintiff has proved

1 liability, as required:

2 (a) a plaintiff may recover for real and personal property damage pursuant to 50-63-104;

3 (B) IN THE EVENT OF A BODILY INJURY OR DEATH, A PLAINTIFF MAY RECOVER:

4 (I) ECONOMIC DAMAGES, INCLUDING MEDICAL EXPENSES AND LOST WAGES; AND

5 (II) NONECONOMIC DAMAGES;

6 ~~(b)(C)~~ a plaintiff may not recover noneconomic losses unless the plaintiff suffered bodily injury or  
7 death ~~proximately caused by the wildfire; and~~

8 ~~(e)(D)~~ an electric facilities provider may not be assessed punitive damages unless there is a showing,  
9 by clear and convincing evidence, that the electric facilities provider's actions were grossly negligent or  
10 intentional. An electric facilities provider's acts or omissions may not be considered grossly negligent if the  
11 electric facilities provider substantially followed its wildfire mitigation plan with respect to the place of ignition.  
12 The availability of punitive damages is otherwise subject to the provisions of 27-1-220 and 27-1-221.

13 ~~(E) A PERSON WHO OBTAINS PAYMENT PURSUANT TO A POLICY OF INSURANCE FOR DAMAGES RESULTING~~  
14 ~~FROM A WILDFIRE LOSS IS DEEMED TO HAVE BEEN MADE WHOLE EXCLUSIVELY FOR PURPOSES OF AN INSURER'S RIGHT~~  
15 ~~TO SUBROGATION UNDER THIS SECTION.~~

16 ~~(7) An electric facilities provider may not be liable in an action brought under this section to the~~  
17 ~~extent that the electric facilities provider establishes that contact between electric facilities and trees or tree~~  
18 ~~limbs originating outside an area the electric facilities provider has a legal right to access or maintain caused~~  
19 ~~the wildfire 's ignition, provided, however, this subsection does not alter the rights or obligations under 69-4-~~  
20 ~~403.~~

21 ~~(8)(6)~~ A civil action against an electric facilities provider under this section must be commenced within  
22 3 years from the date the plaintiff first incurred injury or damages, without regard to when the injury or damages  
23 are discovered. If a plaintiff commences a civil action under this section, the plaintiff shall make service of  
24 process no later than 6 months after filing the complaint. If service of process is not made within the 6-month  
25 period, the court, on motion or on its own initiative, shall dismiss the action without prejudice as to a defendant  
26 unless that defendant has made an appearance in the civil action. If service of process is not made within the 6-  
27 month period, the remaining 3-year period of limitations for a civil action under this section resumes, regardless  
28 of whether the civil action is dismissed.