

**FIRST ENGROSSMENT
with House Amendments**

ENGROSSED SENATE BILL NO. 2339

Introduced by

Senators Kessel, Bekkedahl, Patten

Representatives Novak, J. Olson, Porter

1 A BILL for an Act to create and enact a new chapter to title 49 of the North Dakota Century
2 Code, relating to strict liability and a wildfire mitigation plan of a qualified utility; and to provide
3 for a report.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 49 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 As used in this chapter:

- 9 1. "Hazardous vegetation" means plants, such as trees, shrubs, and grass, which are
10 dry, diseased, dead, or in close proximity to power lines and could come into contact
11 with power lines, especially in dry and windy conditions, and lead to electrical faults or
12 wildfires.
- 13 2. "Qualified utility" means an electric public utility, rural electric cooperative, municipal
14 electric utility, municipal joint action agency, or electric transmission provider as
15 defined in section 49-03-01.5.
- 16 3. "Wildfire mitigation plan" means a plan submitted to the commission or the qualified
17 utility's board of directors in accordance with this chapter.

18 **Limitation on strict liability standard for a qualified utility.**

19 A court may not apply a standard of strict liability to a qualified utility in any cause of action
20 alleging the qualified utility caused wildfire related damages.

21 **Wildfire mitigation plan.**

- 22 1. A qualified utility may prepare a wildfire mitigation plan in accordance with this chapter.

- 1 2. A wildfire mitigation plan under this section must include a description of:
- 2 a. Areas within the service territory of the qualified utility which may be subject to a
- 3 heightened risk of wildfire;
- 4 b. The procedures, standards, and time frames the qualified utility will use to safely
- 5 and reliably operate and inspect its infrastructure affected by hazardous
- 6 vegetation;
- 7 c. The procedures and standards the qualified utility will use to perform vegetation
- 8 management;
- 9 d. The modifications or upgrades to facilities and preventative programs the
- 10 qualified utility will implement to reduce the risk of its electric facilities initiating a
- 11 wildfire;
- 12 e. Procedures for disabling reclosers to mitigate potential wildfires taking into
- 13 consideration:
- 14 (1) The ability of the qualified utility to reasonably disable reclosers and access
- 15 the proposed power line if it becomes de-energized;
- 16 (2) The balance of the risk of wildfire with the need for continued supply of
- 17 electricity to a community; and
- 18 (3) Any potential impact to public safety, first responders, and health and
- 19 communication infrastructure;
- 20 f. Procedures the qualified utility intends to use to restore its electrical system in the
- 21 event of a wildfire;
- 22 g. The costs for implementation of the plan, including system improvements and
- 23 upgrades;
- 24 h. Community outreach and public awareness efforts before and during a wildfire
- 25 season; and
- 26 i. Potential participation with state or local wildfire protection or mitigation plans.
- 27 3. The procedures and standards under this section must be compliant with the American
- 28 national standards institute standard A300, part 7, and the 2023 National Electrical
- 29 Safety Code.

1 **Wildfire mitigation plan submission.**

- 2 1. An electric public utility or electric transmission provider may submit for filing a wildfire
3 mitigation plan to the commission. An electric public utility or electric transmission
4 provider shall publish on its website all wildfire mitigation plans within thirty days of
5 filing. If an electric public utility or electric transmission provider submits a wildfire
6 mitigation plan, the plan must be updated and resubmitted to the commission every
7 two years.
- 8 2. A rural electric cooperative, municipal electric utility, or municipal joint action agency
9 may submit a wildfire mitigation plan to its board of directors. The electric cooperative,
10 municipal electric utility, or municipal joint action agency shall publish on its website all
11 wildfire mitigation plans within thirty days of approval from its board of directors. If a
12 rural electric cooperative, municipal electric utility, or municipal joint action agency
13 submits a wildfire mitigation plan, the plan must be updated and reapproved by the
14 board of directors every two years.
- 15 3. The preparation and publishing of, and compliance with, the qualified utility's wildfire
16 mitigation plan constitutes a rebuttable presumption that the qualified utility exercised
17 a reasonable standard of care.

18 **Annual report.**

- 19 1. An electric public utility or electric transmission provider with a wildfire mitigation plan
20 on file may submit an annual report detailing the utility's compliance with the plan to
21 the commission, no later than December thirty-first of each year the plan is effective. If
22 the utility submits an annual report, the utility shall publish the report on its website.
- 23 2. A rural electric cooperative, municipal electric utility, or municipal joint action agency
24 with a wildfire mitigation plan may submit an annual report to its board of directors or
25 governing body summarizing the rural electric cooperative's, municipal electric utility's,
26 or municipal joint action agency's compliance with its approved wildfire mitigation plan.
27 The rural electric cooperative, municipal electric utility, or municipal joint action agency
28 shall publish the report on its website.