The Center to Protect Ranchers

A PROJECT OF THE INSTITUTE FOR LEGISLATIVE ANALYSIS

National Legislative Strategy

Protecting Property Owners from ESG and DEI-Ignited Wildfires Act

Model Legislation - Introduction in 30 States

Texas Edition

TEXAS EDITION | MODEL LEGISLATION

Key Components:

1. **Nullification of Wildfire Mitigation Plans for Utility Companies with DEI and ESG Operational Frameworks**
2. **Strict Liability Standards for Wildfire Damages by Utilities with DEI and ESG**

By: ____________________ H.B. No. ______

A BILL TO BE ENTITLED

AN ACT

relating to wildfire mitigation plans, self-insurance, and civil liability for wildfires involving certain providers of electric service that adopt environmental, social, governance, diversity, equity, inclusion, or international sustainability frameworks; authorizing civil actions; prohibiting certain self-insurance and ratepayer recovery; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. LEGISLATIVE FINDINGS. The legislature finds that:

(1) private property, ranchland, crops, livestock, homes, businesses, wildlife habitat, water infrastructure, fences, and other improvements are essential to the liberty, livelihood, and prosperity of the people of this state;

(2) electric utilities, municipally owned utilities, and electric cooperatives operate facilities that are capable, if not prudently constructed, inspected, maintained, operated, and de-energized when necessary, of igniting or propagating catastrophic wildfires;

(3) a provider of electric service that receives monopoly privileges, rate recovery, access to rights-of-way, or other public benefits has a corresponding duty to operate with undivided attention to public safety, reliability, affordability, and the protection of private property;

(4) wildfire mitigation planning is valuable only if the planning process remains focused on engineering judgment, vegetation management, infrastructure inspection and replacement, emergency coordination, de-energization protocols, accepted safety standards, and other measures that actually reduce wildfire ignition and propagation risk;

(5) a wildfire mitigation plan should not become a liability shield, compliance checklist, or investor-facing public relations document that reduces a utility's incentive to make the hard, costly, and necessary operational decisions required to protect Texans from wildfire damage;

(6) environmental, social, and governance frameworks and diversity, equity, and inclusion frameworks may introduce considerations into business, infrastructure, procurement, employment, capital-allocation, and risk-management decisions that are not limited to safety, reliability, affordability, or compliance with law;

(7) when utility costs may be recovered from captive ratepayers and when capital expenditures may increase a utility's rate base, ideological or nonoperational frameworks can increase customer costs while diverting attention from inspection, maintenance, replacement, vegetation management, and other safety-related investments;

(8) public reports, official investigations, civil actions, settlements, or utility disclosures have connected electric utility facilities, maintenance practices, de-energization decisions, or wildfire response to several recent catastrophic wildfires in the United States, including wildfire events in California in 2025, the 2024 Smokehouse Creek Fire in the Texas Panhandle, the 2023 Lahaina wildfire in Hawaii, and the 2021 Marshall Fire in Colorado;

(9) whether or not any particular utility admits negligence in a specific wildfire, this state has a compelling interest in ensuring that Texas property owners are not deprived of full compensation because a utility obtained approval of a wildfire mitigation plan while simultaneously maintaining frameworks that may subordinate safety, maintenance, reliability, or affordability to environmental, social, governance, diversity, equity, inclusion, or international sustainability objectives;

(10) international sustainability goals, including goals adopted, sponsored, administered, endorsed, or promoted by the United Nations, are not enacted law of this state and should not control, influence, or be incorporated into a wildfire mitigation plan submitted under Texas law;

(11) a utility that, during the five years preceding a wildfire, adopted or maintained a covered framework should not be permitted to use a wildfire mitigation plan approved by the Public Utility Commission of Texas as evidence of due care, as a liability limitation, or as a substitute for full responsibility to injured Texans;

(12) a self-insurance plan for wildfire liability can shift the financial risk of a utility-caused wildfire from the utility to ratepayers and can reduce the market discipline created by commercial insurance underwriting, coverage exclusions, deductibles, and risk-based premiums;

(13) a utility that adopts or maintains a covered framework should not be permitted to self-insure for potential wildfire damages under a ratepayer-funded self-insurance plan, reserve, rider, tariff, or other regulatory mechanism; and

(14) strict liability is appropriate when a utility that has adopted or maintained a covered framework ignites or propagates a wildfire through its facilities, because the risk is extraordinary, the utility is best positioned to prevent the harm, and innocent property owners should not bear the loss.

SECTION 2. SHORT TITLE. This Act may be cited as the Protecting Property Owners from ESG- and DEI-Ignited Wildfires Act.

SECTION 3. Section 36.064, Utilities Code, is amended by adding Subsections (i), (j), (k), (l), and (m) to read as follows:

(i) In this section, "adopt" and "covered framework" have the meanings assigned by Section 38.080.

(j) Notwithstanding Subsection (a)(2), Subsection (b), or any other law, the commission may not approve, maintain approval of, or authorize an electric utility to use a self-insurance plan, self-insurance reserve, or similar self-insurance mechanism for potential damages resulting from personal injury or property damage caused by a wildfire if, during the five-year period preceding the date of the application, plan filing, commission approval, annual review, or wildfire, as applicable, the electric utility or an affiliate whose policies, standards, reports, commitments, or directives applied to or influenced the electric utility adopted a covered framework.

(k) An electric utility described by Subsection (j) may not:

(1) self-insure under this section for potential damages resulting from personal injury or property damage caused by a wildfire;

(2) establish, fund, maintain, or collect rates for a self-insurance reserve for potential damages resulting from personal injury or property damage caused by a wildfire;

(3) include in base rates, a rider, surcharge, tariff,

regulatory asset, securitization mechanism, reserve account, or other cost-recovery mechanism any amount for self-insurance of wildfire liability; or

(4) charge to a self-insurance reserve account any judgment, settlement, attorney's fee, expert fee, litigation expense, penalty, fine, retained loss, allocated loss adjustment expense, or other liability or expense arising from a wildfire.

(l) The commission shall reject an application for a self-insurance plan and shall revoke or modify an existing self-insurance plan to the extent necessary to comply with Subsections (j) and (k). An electric utility shall cease collecting any amount under a disqualified self-insurance plan not later than the 30th day after the date the commission determines that the utility is disqualified under Subsection (j).

(m) This section does not prohibit an electric utility from purchasing commercial insurance for wildfire risk or recovering the reasonable and necessary cost of commercial insurance premiums if the cost is otherwise recoverable under law and is not prohibited from recovery under Section 38.083.

SECTION 4. Section 38.080, Utilities Code, is amended by adding Subsections (a-1), (b-1), (b-2), (f), (g), (h), and (i) to read as follows:

(a-1) In this section:

(1) "Adopt" includes to maintain, implement, incorporate, use, apply, report performance under, pledge compliance with, or publicly represent adherence to a policy, plan, target, score, standard, framework, or commitment, whether adopted directly by an electric utility, municipally owned utility, or electric cooperative or by an affiliate whose policies, standards, reports, commitments, or directives apply to or influence the electric utility, municipally owned utility, or electric cooperative.

(2) "Affiliate" means a person or entity that directly or indirectly controls, is controlled by, or is under common control with an electric utility, municipally owned utility, or electric cooperative.

(3) "Covered framework" means:

(A) a diversity, equity, and inclusion framework;

(B) an environmental, social, and governance framework; or

(C) a United Nations sustainability framework.

(4) "Diversity, equity, and inclusion framework" means a policy, plan, program, standard, target, quota, preference, training requirement, supplier requirement, contracting requirement, hiring or promotion criterion, executive-compensation criterion, scorecard, disclosure, or commitment that requires, encourages, rewards, penalizes, measures, or evaluates a decision of an electric utility, municipally owned utility, electric cooperative, or affiliate on the basis of race, color, ethnicity, national origin, sex, sexual orientation, gender identity, gender expression, or any other classification protected by state or federal civil rights law, other than a policy or practice limited to:

(A) compliance with the United States Constitution, the Texas Constitution, or a state or federal statute or court order prohibiting unlawful discrimination; or

(B) ensuring that the entity does not unlawfully discriminate and does not grant a preference, benefit, burden, penalty, quota, or set-aside on the basis of a classification described by this subdivision.

(5) "Environmental, social, and governance framework" means a policy, plan, program, standard, target, metric, disclosure, rating,

investment criterion, financing covenant, procurement criterion, capital-allocation criterion, executive-compensation criterion, vendor scorecard, climate commitment, emissions commitment, stakeholder-governance commitment, or similar framework that requires, encourages, rewards, penalizes, measures, or evaluates a decision of an electric utility, municipally owned utility, electric cooperative, or affiliate on the basis of environmental, social, or governance considerations other than:

(A) compliance with state or federal law;

(B) compliance with an order, rule, or reliability standard issued by a state or federal agency with jurisdiction over the entity;

(C) generally accepted electric engineering, wildfire mitigation, emergency-management, reliability, or safety standards;

(D) the protection of human life, private property, electric reliability, affordability, or critical infrastructure; or

(E) the financial risk of physical damage, service interruption, or liability arising from an identified operational hazard.

(6) "United Nations sustainability framework" means the United Nations Sustainable Development Goals, the United Nations Global Compact, the Principles for Responsible Investment, or any other goal, standard, compact, initiative, pledge, or framework adopted, sponsored, administered, endorsed, or promoted by the United Nations or an entity affiliated with the United Nations.

(7) "Wildfire" means an unplanned fire spreading through vegetative fuels, including a fire occurring in a wildland, rangeland, agricultural area, forested area, or wildland-urban interface area. The term does not include a prescribed burn or controlled burning conducted in compliance with state law.

(b-1) A wildfire mitigation plan filed under Subsection (b) must include a sworn certification, signed by the chief executive officer and the highest-ranking officer responsible for transmission or distribution operations of the utility or cooperative, stating whether, during the five-year period preceding the date the plan is filed, the utility or cooperative or an affiliate whose policies, standards, reports, commitments, or directives apply to or influence the utility or cooperative adopted a covered framework.

(b-2) If the certification under Subsection (b-1) states that a covered framework was adopted, the wildfire mitigation plan must include:

(1) a description of each covered framework adopted;

(2) the date on which each covered framework was adopted;

(3) the business unit, affiliate, officer, employee, contractor, consultant, vendor, or outside organization responsible for implementing, scoring, auditing, reporting, or enforcing the covered framework;

(4) each manner in which the covered framework applied to or influenced operations, maintenance, infrastructure inspection, vegetation management, procurement, capital allocation, wildfire mitigation, risk modeling, de-energization, hiring, promotion, contracting, supplier selection, financing, investor reporting, executive compensation, or community outreach;

(5) each portion of the wildfire mitigation plan, if any, that is based on, derived from, incorporated in, cross-referenced to, designed to satisfy, or reported under the covered framework; and

(6) the steps taken by the utility or cooperative to ensure that the plan is based solely on electric engineering, wildfire safety, emergency-management, reliability, affordability, and property-protection

considerations.

(f) The commission may not approve a wildfire mitigation plan unless the commission finds that:

(1) the plan is in the public interest;

(2) the plan is based on generally accepted electric engineering, wildfire mitigation, emergency-management, reliability, and safety standards;

(3) the plan is reasonably designed to reduce the likelihood that the utility's or cooperative's facilities will ignite or propagate a wildfire;

(4) the plan does not incorporate a covered framework except as disclosed under Subsection (b-2); and

(5) the utility or cooperative has made the certification and disclosures required by Subsections (b-1) and (b-2).

(g) Approval of a wildfire mitigation plan by the commission does not constitute a finding that:

(1) the utility or cooperative has not adopted a covered framework;

(2) a covered framework adopted by the utility or cooperative did not influence operations, maintenance, inspection, vegetation management, wildfire mitigation, capital allocation, or any other utility function;

(3) the utility or cooperative acted prudently;

(4) the utility or cooperative is entitled to immunity from, or a limitation on, civil liability; or

(5) the costs of implementing the plan are recoverable from ratepayers.

(h) A certification or disclosure required by Subsection (b-1) or (b-2) is a public record and may not be withheld from disclosure except to the extent the commission determines that a specific portion contains critical energy infrastructure information, security-sensitive information, or confidential commercial information under state or federal law. The commission shall construe this subsection in favor of public disclosure.

(i) A utility or cooperative that knowingly files a false or materially misleading certification or disclosure under Subsection (b-1) or (b-2), or knowingly omits material information from the certification or disclosure, is subject to an administrative penalty under Chapter 15. Each day the false, misleading, or incomplete certification or disclosure remains on file with the commission constitutes a separate violation.

SECTION 5. Section 38.081, Utilities Code, is amended by adding Subsections (e), (f), (g), and (h) to read as follows:

(e) Subsections (a) and (b) do not apply to an electric utility, municipally owned utility, or electric cooperative if, during the five-year period preceding the date the wildfire ignited or was propagated by the utility's or cooperative's facility, the utility or cooperative or an affiliate whose policies, standards, reports, commitments, or directives applied to or influenced the utility or cooperative adopted a covered framework.

(f) In an action described by this section, a wildfire mitigation plan subject to Subsection (e) is not admissible to prove due care, prudence, absence of negligence, compliance with a duty, mitigation of damages, entitlement to a liability limitation, or satisfaction of an industry standard, except that a party may offer the plan or a portion of the plan for another purpose permitted by the Texas Rules of Evidence.

(g) A finding under Subsection (e) does not require proof that the covered framework caused or contributed to the wildfire, the ignition of the wildfire, the propagation of the wildfire, or the plaintiff's damages.

(h) A tariff, contract, wildfire mitigation plan, commission order, rule, or other regulatory approval may not waive, limit, impair, or condition the application of Subsection (e).

SECTION 6. Subchapter D, Chapter 38, Utilities Code, is amended by adding Sections 38.082 and 38.083 to read as follows:

Sec. 38.082. STRICT LIABILITY FOR WILDFIRE DAMAGES INVOLVING CERTAIN FRAMEWORKS. (a) An electric utility, municipally owned utility, or electric cooperative is strictly liable for all actual damages proximately caused by a wildfire that is ignited or propagated by a transmission or distribution facility owned, operated, maintained, or controlled by the utility or cooperative if, during the five-year period preceding the date the wildfire ignited or was propagated by the facility, the utility or cooperative or an affiliate whose policies, standards, reports, commitments, or directives applied to or influenced the utility or cooperative adopted a covered framework.

(b) A claimant in an action under this section is not required to prove that:

(1) the utility or cooperative acted negligently, recklessly, intentionally, or with gross negligence;

(2) the covered framework caused or contributed to the wildfire, the ignition of the wildfire, the propagation of the wildfire, or the claimant's damages; or

(3) the utility or cooperative failed to implement a wildfire mitigation plan.

(c) A claimant establishes liability under this section by proving by a preponderance of the evidence that:

(1) the claimant suffered actual damages;

(2) a wildfire ignited or was propagated by a transmission or distribution facility owned, operated, maintained, or controlled by the utility or cooperative;

(3) the claimant's damages were proximately caused by the wildfire; and

(4) the utility or cooperative or an affiliate whose policies, standards, reports, commitments, or directives applied to or influenced the utility or cooperative adopted a covered framework during the five-year period preceding the date the wildfire ignited or was propagated by the facility.

(d) A utility or cooperative against which a claim is brought under this section has the burden of proving by clear and convincing evidence that neither the utility or cooperative nor an affiliate whose policies, standards, reports, commitments, or directives applied to or influenced the utility or cooperative adopted a covered framework during the period described by Subsection (c)(4), if the claimant produces prima facie evidence that such a framework was adopted.

(e) Actual damages recoverable under this section include:

(1) damage to or destruction of real property, personal property, homes, buildings, barns, fences, wells, water systems, irrigation systems, equipment, crops, timber, pasture, rangeland, wildlife habitat, livestock, pets, and other animals;

(2) the reasonable cost to repair, replace, remediate, restore, or decontaminate property damaged by fire, smoke, ash, chemicals, water,

erosion, or suppression activity;

(3) loss of use, loss of income, business interruption, agricultural production losses, ranching losses, relocation expenses, evacuation expenses, temporary housing expenses, and other consequential economic damages;

(4) diminution in market value, if applicable;

(5) reasonable and necessary attorney's fees, expert fees, court costs, and litigation expenses; and

(6) pre-judgment and post-judgment interest as provided by law.

(f) If restoration or replacement is reasonably necessary to make a claimant whole, the claimant may recover the reasonable cost of restoration or replacement even if that cost exceeds the diminution in market value of the property, unless the trier of fact finds that the requested restoration or replacement is economically wasteful and not reasonably necessary to restore the claimant's use of the property.

(g) The trier of fact may award exemplary damages in an action under this section only if the claimant establishes an independent basis for exemplary damages under Chapter 41, Civil Practice and Remedies Code.

(h) It is an affirmative defense to liability under this section that the wildfire and the claimant's damages were caused solely by:

(1) an act of war;

(2) an intentional criminal act of a third party other than an employee, contractor, agent, vendor, or affiliate of the utility or cooperative;

(3) a prescribed burn or controlled burning conducted by another person in compliance with state law; or

(4) an act of God, but only if the utility or cooperative proves that the transmission or distribution facility did not ignite or propagate the wildfire.

(i) Comparative responsibility under Chapter 33, Civil Practice and Remedies Code, applies to an action under this section only to the extent another person, other than the claimant, also caused or contributed to the ignition or propagation of the wildfire. A claimant's failure to prepare for, defend against, evacuate from, or suppress a wildfire does not reduce the utility's or cooperative's liability under this section unless the claimant intentionally caused or contributed to the claimant's own damages.

(j) A cause of action under this section is cumulative of any other remedy provided by common law or statute. This section does not limit a claim for negligence, gross negligence, nuisance, trespass, inverse condemnation, breach of contract, fraud, deceptive trade practices, or any other cause of action available under law.

(k) A tariff, contract, wildfire mitigation plan, commission order, rule, liability limitation, filed-rate doctrine, or other regulatory approval may not waive, limit, impair, or condition a cause of action or recovery under this section.

(l) Venue for an action under this section is proper in:

(1) a county in which all or part of the wildfire occurred;

(2) a county in which the claimant's damages occurred;

(3) the county of the defendant's principal office in this state; or

(4) Travis County.

Sec. 38.083. PROHIBITION ON RATEPAYER RECOVERY AND SELF-INSURANCE OF CERTAIN WILDFIRE COSTS. (a) Notwithstanding any other law, an electric utility, municipally owned utility, or electric cooperative may not recover from retail customers, through a rate, tariff, rider, surcharge, fee, assessment, securitization mechanism, regulatory asset, self-insurance reserve, reserve account, or other cost-recovery mechanism, any amount paid or incurred for a judgment, settlement, attorney's fee, expert fee, litigation expense, penalty, fine, retained loss, allocated loss adjustment expense, reserve contribution, or other liability or expense arising from a wildfire for which the utility or cooperative is liable under Section 38.082.

(b) The commission, a municipality exercising original jurisdiction, or the governing body of a municipally owned utility or electric cooperative may not approve or authorize recovery of a cost described by Subsection (a).

(c) A cost described by Subsection (a) is not just, reasonable, necessary, prudent, or in the public interest for purposes of any rate proceeding or cost-recovery proceeding.

(d) This section does not prohibit recovery of a cost incurred to inspect, repair, replace, harden, underground, de-energize, or otherwise improve infrastructure to reduce wildfire risk, if the cost is otherwise recoverable under law and is not a cost described by Subsection (a).

(e) This section may not be construed to limit Section 36.064(j), (k), (l), or (m).

SECTION 7. RULEMAKING. The Public Utility Commission of Texas shall adopt rules necessary to implement this Act not later than the 180th day after the effective date of this Act.

SECTION 8. TRANSITION. (a) Section 36.064, Utilities Code, as amended by this Act, applies to an application, plan filing, commission approval, annual review, self-insurance reserve collection, reserve charge, rate, tariff, rider, regulatory asset, securitization mechanism, or other cost-recovery request pending on or filed with or approved by the Public Utility Commission of Texas on or after the effective date of this Act, regardless of whether the self-insurance plan was initially approved before, on, or after the effective date of this Act.

(b) Not later than the 60th day after the effective date of this Act, each electric utility with a self-insurance plan approved under Section 36.064(a)(2), Utilities Code, before the effective date of this Act shall file with the Public Utility Commission of Texas a sworn certification stating whether the utility or an affiliate whose policies, standards, reports, commitments, or directives applied to or influenced the utility adopted a covered framework during the five-year period preceding the effective date of this Act.

(c) If a certification filed under Subsection (b) of this section states that the electric utility or an affiliate adopted a covered framework, or if the Public Utility Commission of Texas otherwise determines that the utility is disqualified under Section 36.064(j), Utilities Code, as added by this Act, the commission shall revoke or modify the self-insurance plan to the extent necessary to comply with Section 36.064, Utilities Code, as amended by this Act. The utility may not collect any amount for wildfire liability self-insurance after the effective date of this Act.

(d) Sections 38.081, 38.082, and 38.083, Utilities Code, as amended or added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act.

(e) For purposes of Sections 36.064, 38.081, and 38.082, Utilities Code, as amended or added by this Act, a covered framework adopted before the effective date of this Act is considered to have been adopted during the applicable five-year period if the electric utility, municipally owned utility, electric cooperative, or affiliate maintained, implemented, incorporated, used, applied, reported performance under, pledged compliance with, or publicly represented adherence to the covered framework on or after the effective date of this Act.

SECTION 9. SEVERABILITY. It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, and word in this Act, and every application of the provisions in this Act, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstance is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force.

SECTION 10. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2027.