



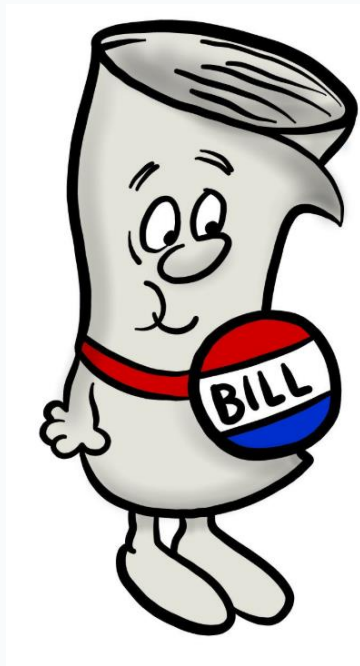
# HB490 Montana's Wildfire Liability Law

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Mid-West Electric Consumers Association  
Annual Meeting

# HB490 - Montana's Wildfire Liability Law

- Two years in the making (Co-ops, NorthWestern, MDU, Governor's Office)
- Objectives:
  - 1) Retain affordable insurance coverage.
  - 2) Prevent strict liability standard.
  - 3) Reduce wildfire risk.



# HB490 Objective: Reduce Fire Risk

**REQUIRED** all co-ops, IOUs, municipalities, transmission to develop wildfire mitigation plans to reduce fire risk and to satisfy insurers.

**Mitigation Plan MUST include the following:**

- Description of fire risk areas
- Facility inspection, maintenance, repair, operation
- Vegetation management
- Facility upgrades
- Power line de-energization strategy
- Power line re-energization strategy
- Federal, tribal, state and local consultation
- Public involvement
- Incremental costs for regulated utilities

**Approval:**

- Co-op Boards of Trustees
- IOUs - Montana Public Service Commission



# HB490 Objective, Prevent Strict Liability

- **Article I, Section 19 of California Constitution – inverse condemnation provides “just compensation” when public entity’s actions damage private property.**
  - \* Property owner need not prove negligence to recover damages.
- **Plaintiff attorneys attempting to apply this “strict liability” standard in other states where utility considered automatically liable, even if it acted reasonably, complied with regulations and maintained equipment and ROW.**
- **HB490 established strict liability does not apply and “standard of care,” or statutory criteria for civil liability.**
- **If utility is in compliance with mitigation plan, utility may only be found civilly liable if plaintiff establishes:**
  - \* Utility failed to exercise degree of care, skill and learning of similarly situated utility.
  - \* Failure was proximate cause of injury.



# Strict Liability May Not Be Applied

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.



# HB490 - Limits Liability to this Statute

(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



# HB490 - Similarly Situated Provider

(3) An electric facilities provider may be found civilly liable 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 an act or omission of the electric facilities provider associated with implementing a wildfire mitigation plan only if the party seeking recovery establishes:

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





# HB490 - Rebuttable Presumption Incremental Costs

(4) 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 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)], 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.





# HB490 - Punitive Damages

(c) an electric facilities provider may not be assessed punitive damages unless there is a showing, by clear and convincing evidence, that the electric facilities provider's actions were grossly negligent or intentional. An electric facilities provider's acts or omissions may not be considered grossly negligent if the electric facilities provider substantially followed its wildfire mitigation plan with respect to the place of ignition.



# HB490 - Insurance

(e) a person who obtains payment pursuant to a policy of insurance for damages resulting from a wildfire loss is deemed to have been made whole exclusively for purposes of an insurer's right to subrogation under this section.



# HB490 - Key Factors in Securing Support

- **Reputation of electric cooperatives & sponsor**
- **Stakeholder teamwork**
- **Consulted state/federal agencies, Lt. Governor, legislative leaders, ag & business groups.**
- **Consulted insurance and trial lawyer lobbyists.**
- **Earned bipartisan support, including MT American Indian Caucus.**
- **Grassroots support**



# Post-Session Activities

- **IOU/Co-op Wildfire Summit**
- **Co-op Manager Meeting**
- **Co-op Wildfire Mitigation Plan Training**
- **Co-op Mitigation Plan Public Meetings/Comments**
- **Co-op Board Approval of Mitigation Plans**

# Contact

**Mark Lambrecht**

**CEO**

**Montana Electric Cooperatives' Association**

**501 Bay Drive**

**Great Falls, MT 59403**

**(406) 594-2955**

**[mark@mtco-ops.com](mailto:mark@mtco-ops.com)**