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## FISCAL IMPACT REPORT

**SPONSOR** Feldman **ORIGINAL DATE** 09/16/11  
**LAST UPDATED** 09/19/11 **HB** \_\_\_\_\_

**SHORT TITLE** Restrict Use or Sale of Fireworks **SB** 28

**ANALYST** Chabot/Lucero

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(Minimal)	(Minimal)	Recurring	General Fund
	(Minimal)	(Minimal)	Recurring	Counties and Municipalities

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB20, HB25, and HB38

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General Office (AGO)

Energy, Minerals and Natural Resources Department (EMNRD)

Public Regulations Commission (PRC)

State Fire Marshall (SFM)

### SUMMARY

#### Synopsis of Bill

Senate Bill 28 adds subsection 7 to Section 12-10-4B NMSA 1978 authorizing the governor to proclaim a state of emergency that temporarily bans or restricts the sale or use, or both the sale and use of, fireworks, except display fireworks in an area where the national fire danger rating system deems as high, very high or extreme.

A new section is added to the Fireworks Licensing and Safety Act (Chapter 60, Article 2C, NMSA 1978) authorizing the governor to proclaim a state of emergency that bans or restricts the sale and use of fireworks. The proclamation will explain restrictions and the geographic content. The governor shall consult with Indian nations before issuing a proclamation affecting tribal lands. Any proclamation may not be less restrictive of any municipality or county imposed restrictions.

In Section 4 of the Act, extreme or severe drought conditions are changed to the adjective ratings of the federal fire danger rating system: high, very high or extreme. This is a change from using drought indices published by the National Weather Bureau. After a public hearing, a municipality shall issue a proclamation of restrictions if the governing body finds that fire danger is high, very high or extreme. Language of specific types of fireworks in this section is deleted and left to be determined by the governing body. Any proclamation restricting fireworks sales or use must be issued no less than 20 days before any holiday for which fireworks may be sold. The municipality proclamation shall be effective for 30 days and may be modified or rescinded within those 30 days. Succeeding proclamations may be made. Similar provisions are included for counties to impose restrictions within unincorporated areas.

The bill amends the definition of fireworks by removing language relating to permissible and display fireworks. This will allow banning of all fireworks if warranted.

The bill has an emergency clause.

### **FISCAL IMPLICATIONS**

Any ban on fireworks sales may reduce gross receipts revenue to the state, counties and municipalities. LFC staff has been unable to obtain fireworks sales data from any state agencies, but TNT Fireworks estimates fireworks sales in New Mexico to be approximately \$14 to \$15 million annually. This generates approximately \$750 thousand in gross receipts revenue to the state general fund. Additional distributions are made to counties and municipalities depending on their gross receipts rate.

According to the State Fire Marshall fireworks licenses are issued for one year and wholesalers may buy fewer licenses if they know or suspect bans or restrictions may be imposed. Any licenses purchased are not refundable. Fees for licenses range from \$100 for a retail permit to \$2,000 for a distributor permit.

The State Fire Marshall states the enforcement activities of the State Fire Marshall may be reduced upon declarations of bans on the sale and use of fireworks. However, additional expenses for enforcing the ban may result for law enforcement agencies.

The state and local governments may see reduced gross receipts tax revenues as a result of fireworks bans imposed. The impact is difficult to assess and would vary year to year based upon drought conditions. Since the money used to by fireworks is typically discretionary income, it would probably be used to purchase other products in which the gross receipts tax would still be collected.

An aspect that is difficult to quantify is if fireworks are banned in an only one area of the state, how many individuals would drive to an area not imposing a ban or to tribal entities to purchase fireworks.

### **SIGNIFICANT ISSUES**

According to the State Fire Marshall, the bill grants the authority to the governor to impose fireworks bans in an area where the adjective rating is high, very high, or extreme which is a new authority. The governor can impose a ban more restrictive than one declared by local

government. Currently local government has only limited powers to ban certain fireworks. However, the bill does not address whether a county or municipality can impose a ban more restrictive than the governor's declaration.

EMNRD states it is important for the governor to be able to restrict the sale and use of fireworks on both a statewide and regional basis so a consistent policy results.

### **ADMINISTRATIVE IMPLICATIONS**

The State Fire Marshall would have to develop policies and procedures for recommending any fireworks ban to the governor. These would need to include consultation procedures with tribal authorities if a ban includes tribal lands.

### **CONFLICT**

This bill is similar to House Bill 20; however, HB20 excludes display fireworks and this bill does not.

### **TECHNICAL ISSUES**

The AGO recommends "fire danger rating" be changed to the "national fire danger rating system" throughout the bill to be consistent with Section 4 language.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The governor would not be able to issue fireworks bans and the issue would remain with local governments. Local governments could still ban fireworks displays.

GAC:DL/svb