

HOUSE BILL 57

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

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and Peter Wirth and Pat Woods

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PRESCRIBED BURNING; ENACTING THE PRESCRIBED BURNING ACT; ALLOWING PRIVATE LANDOWNERS TO CONDUCT PRESCRIBED BURNS; PROVIDING FOR PRESCRIBED BURN PERMITS; LIMITING CIVIL LIABILITY; INSTITUTING A PRESCRIBED BURN MANAGER CERTIFICATION

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PROGRAM; PROVIDING FOR PRESCRIBED BURN TRAINING; PROVIDING FOR THE ESTABLISHMENT AND DISTRIBUTION OF FEES; EXPANDING USES OF THE FOREST LAND PROTECTION REVOLVING FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Prescribed Burning Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Prescribed Burning Act:

- A. "certified prescribed burn manager" means a person certified pursuant to the prescribed burn manager certification program;
- B. "department" means the energy, minerals and natural resources department;
- C. "division" means the forestry division of the department;
- D. "extension service" means the New Mexico state university cooperative extension service;
- E. "pile burning" means the burning of vegetation, usually sticks, limbs or boles of trees and brush, resulting from land management activities, that have been stacked in piles, but does not mean the burning of a single or few small piles of yard waste or pruning debris on an individual's property; and
- F. "prescribed burn" means the controlled

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application of fire to existing vegetative fuels through pile burning or the burning of vegetation over predefined areas under appropriate weather and environmental conditions for purposes of community protection, watershed resilience, silviculture, wildland fire hazard reduction, fuels reduction, rangeland improvement, wildlife management, habitat improvement, invasive species management and ecological maintenance or restoration HENRC→, but does not include agricultural burning to clear fields of stubble or slash or to manage invasive species impacting crop production, as part of orchard management or to clear irrigation ditches of vegetation and debris in order to improve or restore efficient water flow and delivery←HENRC .

SECTION 3. [NEW MATERIAL] PRESCRIBED BURN USE.--

A. Prescribed burning is considered in the public interest and not a public or private nuisance.

B. A private landowner HENRC→or a private landowner's agent, contractor or legally authorized designee←HENRC shall have a right to conduct a prescribed burn on the landowner's property, except when the state forester or a county or municipality issues restrictions prohibiting a prescribed burn because of drought conditions; provided that the prescribed burn is conducted with appropriate precautionary measures, including: the use of sufficient personnel and equipment; the prior notification of local fire officials; burn

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and contingency planning; and the use of appropriate prescribed burn techniques that cause the fire to be confined to a predetermined area.

SECTION 4. [NEW MATERIAL] CIVIL LIABILITY.--

A. A private landowner or a private landowner's agent, contractor or legally authorized designee who is a certified prescribed burn manager and who conducts a prescribed burn is liable for HENRC→~~civil damages to property or injury~~←HENRC HENRC→any damages to property or for personal injury←HENRC caused by the prescribed burn, including the reignition of a previously contained prescribed burn, if that person was negligent in starting, controlling or extinguishing the prescribed burn.

B. A private landowner or a private landowner's agent, contractor or legally authorized designee who is not a certified prescribed burn manager and who conducts a prescribed burn is liable for double HENRC→~~civil damages to property or injury~~←HENRC HENRC→damages to property or for personal injury←HENRC caused by the prescribed burn, including the reignition of a previously contained prescribed burn, if that HENRC→~~person~~←HENRC HENRC→private landowner or that private landowner's agent, contractor or legally authorized designee←HENRC was negligent in starting, controlling or extinguishing the prescribed burn.

SECTION 5. [NEW MATERIAL] MODEL PRESCRIBED BURN

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PERMITS.--The department shall promulgate rules establishing a model prescribed burn permit for use by counties or municipalities. The rules shall provide for required terms and conditions of a prescribed burn permit, including:

- A. common terminology and definitions;
- B. standards for data collection regarding the ownership of land, fuels used, size of the prescribed burn, location of the prescribed burn and entity conducting the prescribed burn;
- C. the types of prescribed burning authorized by the permit;
- D. procedures to coordinate with HENRC→smoke management permits issued by the department of environment←HENRC HENRC→the requirements of the department of environment's smoke management program←HENRC ;
- E. requirements for the distance of the prescribed burn from structures, buildings and fences;
- F. the number of acres and estimated number of burn piles authorized under the permit;
- G. requirements for notification of the public and of appropriate personnel, such as fire dispatch personnel, fire department personnel and county or municipal fire marshals, prior to and upon ignition and termination of the prescribed burn;
- H. procedures to permit prescribed burns that cross

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jurisdictions; and

I. procedures to aggregate permit data and report annually on the effectiveness of the model prescribed burn permit.

**SECTION 6. [NEW MATERIAL] CRITERIA FOR COUNTIES OR MUNICIPALITIES ISSUING PRESCRIBED BURN PERMITS.--**A county or municipality may adopt an ordinance to require a private landowner to obtain a permit to conduct a prescribed burn. A county or municipality that requires landowners to obtain a permit to conduct a prescribed burn shall use the model prescribed burn permit adopted by the department.

**SECTION 7. [NEW MATERIAL] PRESCRIBED BURN MANAGER CERTIFICATION.--**

A. The division shall create a prescribed burn manager certification program accessible to private landowners and private landowners' agents, contractors or legally authorized designees who conduct prescribed burns. The certification program shall include training, which shall be provided by the extension service, on all relevant aspects of prescribed burn, including legal requirements, safety, weather, fire behavior, smoke management, prescribed burn techniques, public relations, planning and contingencies.

B. The department shall adopt rules to create the prescribed burn manager certification program, including the training and certification of certified prescribed burn

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managers; training components and engagement of subject matter experts; application processes; qualification for and terms and durations of certification; types of certification, if applicable; oversight of the program; grounds and processes for renewal, suspension and revocation of certifications; and application, certification and renewal fees.

C. The department, by rule, may establish a fee at an amount not to exceed the amount required to recover costs that the division incurs in providing certification and processing applications for persons seeking certification as certified prescribed burn managers pursuant to this section. All proceeds from that fee shall be deposited in the forest land protection revolving fund.

D. Nothing in this section may be construed as creating a mandatory prescribed burn manager certification requirement to conduct prescribed burning.

**SECTION 8.** [NEW MATERIAL] PRESCRIBED BURN TRAINING.--The extension service shall provide the training required for prescribed burn manager certification as specified in rules adopted by the department. The extension service may collect fees for providing the training. The fees shall not exceed the amount required to recover costs that the extension service incurs in providing the training.

**SECTION 9.** Section 30-32-4 NMSA 1978 (being Laws 1882, Chapter 61, Section 7, as amended) is amended to read:

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"30-32-4. DAMAGES TO PERSON INJURED.--[~~SEC. 69~~] If [~~any~~] a person [~~shall set~~] sets on fire any woods, marshes or prairies, whether [~~his~~] the person's own or not, so as thereby to occasion [~~any~~] damage to [~~any other~~] another person HJC→**or that person's property**←HJC , [~~such~~] the person shall make satisfaction in double damages to the party injured to be recovered by civil action, unless the person is conducting a prescribed burn pursuant to the Prescribed Burning Act."

SECTION 10. Section 68-2-28 NMSA 1978 (being Laws 1987, Chapter 143, Section 6, as amended) is amended to read:

"68-2-28. FOREST LAND PROTECTION REVOLVING FUND CREATED.--

A. There is created in the state treasury a revolving fund to be known as the "forest land protection revolving fund". The forest land protection revolving fund shall consist of all receipts as provided by Section 68-2-26 NMSA 1978, fees collected pursuant to the Prescribed Burning Act, appropriations, gifts, grants, donations and revenue received by the forestry division of the energy, minerals and natural resources department from the federal government or other state agencies and other sources for conducting forest and watershed management projects. Subject to legislative appropriation, expenditures may be made from the forest land protection revolving fund upon vouchers signed by the state forester and warrants issued by the secretary of finance and

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administration:

(1) for the administration and enforcement of the Forest Conservation Act;

(2) to administer forest and watershed management projects, including acquisition of tools and equipment and expenses incurred by the forestry division in planning and supervising forest and watershed management projects; ~~and~~

(3) to fund approved projects pursuant to the Forest and Watershed Restoration Act; and

(4) to administer the Prescribed Burning Act.

B. Money in the forest land protection revolving fund shall not revert to the general fund."