

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

SPONSOR McQueen/ ORIGINAL DATE 01/25/21
Armstrong, G. LAST UPDATED 02/08/21 HB 57/aHENRC/aHJC

SHORT TITLE Prescribed Burning Act SB _____

ANALYST Wan

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
		\$0.5	Recurring	Forest Land Protection Revolving Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources (EMNRD)

Environment Department (NMED)

New Mexico State University (NMSU)

Other Responses

The Nature Conservancy

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment adds language to Section 9 of HB57 to extend liability protection for a person harmed by a fire set by another individual to include property damage.

Synopsis of HENRC Amendment

The House Energy, Environment and Natural Resources Committee amendment adds language to clarify the definition of “prescribed burn” excludes “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.”

To the provision allowing a private landowner to conduct prescribed burns on his or her property, the amendment adds “a private landowner’s agent, contractor or legally authorized designee” has this same right.

In Section 4, the amendment strikes the language that establishes liability for “civil damages to property or injury” and replaces it with “any damages to property or for personal injury.”

Lastly, the amendment clarifies the bill’s requirement for model prescribed burn permit rules to coordinate with “the requirements of the department of environment’s smoke management program.”

Synopsis of Original Bill

House Bill 57 would enact the Prescribed Burning Act, which would:

- Establish that a private landowner has the right to conduct prescribed burns, provided that the prescribed burn is conducted with appropriate precautionary measures and abides by any restrictions on prescribed burning issued by the State Forester, a county, or a municipality due to drought conditions;
- Establish a voluntary training and certification program, to be administered by the New Mexico State University (NMSU) Cooperative Extension Service and the State Forestry Division (SFD) of the Energy, Minerals and Natural Resources Department (EMNRD), for private landowners and contractors interested in conducting prescribed burns;
- Require SFD to develop a model prescribed burn permit for use by counties or municipalities;
- Define statutory liability for individuals who plan and use prescribed burning on private lands;
- Establish that private landowners, contractors, and other private practitioners are liable for civil damages if found negligent in starting, controlling, or extinguishing a prescribed burn; and
- Amend Section 68-2-28 NMSA 1978 to require fees collected by SFD for administering the prescribed burning certification program to be deposited in the forest land protection revolving fund and allow expenditures from that fund for the purpose of administering the Prescribed Burning Act.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

HB57 contains no appropriation. EMNRD reports SFD has sufficient resources to complete the certification and model permit rulemaking processes and to implement the certification program

without additional funding. NMSU reports that the Cooperative Extension Service can implement the prescribed burn training program within its existing capacity and will require no additional resources.

HB57 would allow EMNRD to charge fees for certification, which the agency expects to set at \$50. Because EMNRD will need to develop rules for certification and NMSU will need to complete the training curriculum, EMNRD anticipates FY23 will be the first year certifications are issued and fees are collected. The agency anticipates issuing approximately 10 certifications in FY23, for an estimated revenue impact of \$500.

SIGNIFICANT ISSUES

EMNRD's analysis explains:

“Hundreds of thousands of acres of forests in New Mexico are currently at risk of high severity wildfire. ...Extensive research in New Mexico, the Southwest, and throughout the world has determined that prescribed fire is the most effective tool to reduce the fuel load of grass, shrubs, and trees that act as fuel for future wildfires. However, the current pace and scale of prescribed burning in New Mexico is not sufficient to effectively mitigate high-severity wildfire. Prescribed burns modulate the extreme behavior of future wildfires and benefit people, property, watersheds, forests, rangelands, and air quality and reduce the costs of wildfire suppression. HB57 lays out a path to remove barriers to prescribed burning by private landowners that will result in more prescribed burning on private lands that will pre-treat those lands to reduce fuel loads to slow the spread of wildfires and reduce the threat of catastrophic wildfire and risks to our communities, drinking water, and forests.”

HB57 is based on the comprehensive final report from the prescribed fire working group, which can be found [here](#). The working group included participants from a variety of state agencies and interest groups and was tasked by the Legislature with exploring ways to expand the practice of prescribed fire on private lands. The report identified four primary barriers to prescribed burning on private lands in New Mexico:

- Undefined statutory liability for prescribed burning;
- Lack of available and affordable insurance, which is a direct result of undefined liability;
- Need among private practitioners for training to develop expertise in prescribed burning; and
- Variability across local governments in the process for obtaining permission to burn.

The recommendations of the report and corresponding provisions of HB57 specifically address these challenges and aim to create the conditions under which prescribed burning on private lands can be used more frequently and effectively.

To address air quality concerns associated with smoke from prescribed burns, HB57 includes a requirement that, in developing rules for the model prescribed burn permit, EMNRD include procedures to coordinate with smoke management permits issued by the Environment Department (NMED). According to NMED,

“Since the majority of private landowners are not subject to the requirements of the air quality regulation, 20.2.65 NMAC – Smoke Management, the training in smoke management and prescribed burn techniques would help mitigate smoke impacts to nearby populations and minimize the possibility of violating any of the National Ambient Air Quality Standards (NAAQS) for criteria pollutants.”

PERFORMANCE IMPLICATIONS

EMNRD reports HB57 will have positive performance implications for SFD “by reducing the severity of wildfires and, therefore, the costs, of wildfire suppression, and improve the health of private forest lands and watersheds in the state.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to EMNRD, “the barriers that currently limit or prevent the use of prescribed burning by private landowners to reduce wildfire risk, severity, and size and improve the health of New Mexico’s forests and watersheds will remain in place.”

CW/rl/al/sb