

HOUSE BILL 195

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Matthew McQueen and Greg Nibert 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 FORESTRY; AMENDING THE FOREST CONSERVATION ACT;
AUTHORIZING THE FORESTRY DIVISION OF THE ENERGY, MINERALS AND
NATURAL RESOURCES DEPARTMENT TO CONTRACT FOR AND CONDUCT FOREST
FIRE PREVENTION, SUPPRESSION, CONTROL, SUPPRESSION
REHABILITATION AND REPAIR, POST-FIRE SLOPE STABILIZATION,
EROSION CONTROL, RIPARIAN RESTORATION, SEEDING AND
REFORESTATION OF BURNED AREAS; REMOVING REFERENCES TO THE
REPEALED FOREST CONSERVATION FUND; MAKING TECHNICAL CHANGES;

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AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 68-2-1 NMSA 1978 (being Laws 1959, Chapter 122, Section 1, as amended) is amended to read:

"68-2-1. SHORT TITLE.--Sections 68-2-1 through ~~[68-2-25]~~ 68-2-27 NMSA 1978 may be cited as the "Forest Conservation Act"."

SECTION 2. Section 68-2-2 NMSA 1978 (being Laws 1959, Chapter 122, Section 2) is amended to read:

"68-2-2. ACCEPTANCE OF FEDERAL LAWS.--The state ~~[of New Mexico]~~ is authorized to accept the provisions of the act of congress dated June 7, 1924 (43 Stat. 653) commonly known as the Clarke-McNary Act and the act of congress dated ~~[August 25, 1950]~~ July 1, 1978 (92 Stat. 365) commonly known as the Cooperative ~~[Forest Management Act and the act of congress dated June 25, 1947 (61 Stat. 177) commonly known as the Forest Pest Control Act]~~ Forestry Assistance Act of 1978, as amended."

SECTION 3. Section 68-2-3 NMSA 1978 (being Laws 1959, Chapter 122, Section 3, as amended) is amended to read:

"68-2-3. STATE FORESTER--COMPENSATION--[SEAL]
QUALIFICATIONS.--

A. The director of the forestry division of the energy, minerals and natural resources department is the "state forester" and shall be paid a salary, set by the secretary of energy, minerals and natural resources ~~[to be paid from the~~

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~~forest conservation fund. The division shall adopt a seal and such seal affixed to any paper signed by the state forester shall be prima facie evidence of the due execution thereof].~~

B. No individual may be appointed as the state forester unless ~~[he]~~ the individual is, by reason of scientific education and experience, knowledgeable in the principles of forest management."

SECTION 4. Section 68-2-6 NMSA 1978 (being Laws 1959, Chapter 122, Section 6, as amended) is amended to read:

"68-2-6. DIVISION TO SERVE AS CONTRACTING AGENCY FOR STATE--CONTRACTING AUTHORITY--For the purposes of the Forest Conservation Act, the forestry division of the energy, minerals and natural resources department is designated as the agent of the state and is authorized to enter into contracts and cooperative agreements with the secretary of agriculture of the United States of America, private landowners, the commissioner of public lands of the state, individuals, corporations or other local, state, federal and private agencies or organizations to ~~[prevent and suppress forest fires, brush fires, grass fires or other wild fires, to do research; establish nurseries; and furnish technical advice to the people of the state]~~ carry out the provisions of the Forest Conservation Act and to do all other acts necessary to take advantage of and carry out the provisions of the acts of congress ~~[hereinbefore set out and all other acts of congress which are promulgated for forest conservation or rural fire~~

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defense] promulgated for the purposes of the Forest Conservation Act and the federal Cooperative Forestry Assistance Act of 1978, as amended."

HENRC→~~SECTION 5. Section 68-2-7 NMSA 1978 (being Laws 1967, Chapter 208, Section 1) is amended to read:~~

~~"68-2-7. FOREST FIRE DEFINED.--As used in the Forest Conservation Act, "forest fire" means a fire burning uncontrolled on lands covered wholly or in part by timber, brush, grass, grain or other [inflammable] vegetation."~~←HENRC

HENRC→SECTION 5. Section 68-2-7 NMSA 1978 (being Laws 1967, Chapter 208, Section 1) is amended to read:

"68-2-7. FOREST FIRE AND SUPPRESSION DEFINED.--As used in the Forest Conservation Act:

A. "forest fire" means a fire burning uncontrolled on lands covered wholly or in part by timber, brush, grass, grain or other [inflammable] vegetation; and

B. "suppression" means all of the activities to extinguish, limit or contain forest fire spread."←HENRC

SECTION 6. Section 68-2-8 NMSA 1978 (being Laws 1967, Chapter 208, Section 2, as amended) is amended to read:

"68-2-8. [STATEWIDE] FORESTRY DIVISION RESPONSIBILITY FOR STATEWIDE FOREST FIRE PROTECTION AND FOREST CONSERVATION-- AUTHORITY--POLICE POWER.--

A. The [state shall have the responsibility] forestry division of the energy, minerals and natural resources

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department is responsible for the conservation of forests and forest resources and the prevention and suppression of forest fires on all nonfederal, nonmunicipal lands in the state.

~~[Activities authorized under this section shall include, but not be limited to, cooperation with federal, state and local agencies in the development of systems and methods for the prevention, control, suppression and prescribed use of fires on rural lands and within rural communities; and providing]~~ The division, whether independently or in cooperation with federal, state or local agencies, is authorized to:

- (1) conserve forests and forest resources;
- (2) maintain and improve forest health;
- (3) prevent, control and suppress forest fires;
- (4) conduct forest fire suppression rehabilitation and repair;
- (5) conduct post-fire slope stabilization, erosion control, riparian restoration, seeding and reforestation of burned areas;
- (6) research forestry and forest fires;
- (7) prescribe uses of fires;
- (8) conduct urban and community forestry;
- (9) establish and support nurseries;
- (10) furnish forestry and forest fire-related technical advice to the people of the state, including technical advice and projects related to the mitigation of or

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adaptation to changing climatic conditions; and

(11) provide financial, technical and related assistance to [~~others~~] local governments to organize, train and equip local [~~fire-fighting forces~~] firefighters to prevent, control and suppress forest fires threatening the natural resources of rural forest areas or communities. [~~For such purposes:~~

~~A. The police power of the state shall extend to such control of private forest lands as shall be necessary for the prevention and suppression of forest fires.]~~

B. The [~~state forester~~] forestry division and [~~his~~] the division's agents:

(1) shall have unrestricted access to private and state lands, including the use of roads and trails [~~in order~~] to carry out forest fire HENRC→prevention and←HENRC suppression work

~~[C. the state forester and his agents]; and~~

(2) shall not be liable to civil action for trespass or for damages for acts done in the course of their official duties unless otherwise expressly provided by contract or agreement with the landowner, which contract or agreement is made pursuant to the provisions of the Forest Conservation Act. [and

~~D. the state forester and his agents may, in the event of a forest fire, summon and deputize any able-bodied man to assist in suppressing the forest fire and may request tools~~

~~and equipment under the control of or owned by the landowner or timber operator upon whose lands the forest fire is burning or whose lands are threatened by the forest fire]~~

C. The police power of the state shall extend to such control of private forest lands as is necessary for the HENRC→prevention and←HENRC suppression of forest fires.

Hf11→"←Hf11

Hf11→D. The authorization provided in Subsection A of this section with respect to forest conservation, fire prevention and post-fire forest rehabilitation activities, but not forest fire suppression activities, is to be exercised in cooperation and pursuant to an agreement with the underlying landowner or land manager."←Hf11

SECTION 7. Section 68-2-9 NMSA 1978 (being Laws 1967, Chapter 208, Section 3) is amended to read:

"68-2-9. PENALTY FOR OBSTRUCTION.--Any person obstructing the access of the [~~state forester or his~~] forestry division of the energy, minerals and natural resources department or the division's agents to lands, [failing to obey any summons to appear and assist in the suppression of a forest fire or refusing to furnish tools and equipment] as provided in Section [~~62-3-6.2 New Mexico Statutes Annotated, 1953 Compilation]~~ 68-2-8 NMSA 1978, is guilty of a misdemeanor and upon conviction may be sentenced to not less than thirty days [~~or~~] nor more than ninety days in the county jail or fined not less than one hundred dollars (\$100) [~~or~~] nor more than one thousand

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dollars (\$1,000), or both such imprisonment and fine."

SECTION 8. Section 68-2-11 NMSA 1978 (being Laws 1959, Chapter 122, Section 7, as amended) is amended to read:

"68-2-11. CONTRACTS FOR PROTECTION OF FOREST AREAS.--The commissioner of public lands is authorized to enter into contracts and cooperative agreements with the forestry division of the energy, minerals and natural resources department for the protection and conservation of [~~forest~~] forests and denuded forest areas under [~~his~~] the commissioner's jurisdiction and control and is authorized to pay the assessments thereunder from the state land office maintenance fund, provided that such contracts and agreements do not commit the use of the lands in a manner and do not entail expenditures of the maintenance fund contrary to the provisions of the act of congress dated June 20, 1910, entitled Enabling Act for New Mexico."

SECTION 9. Section 68-2-14 NMSA 1978 (being Laws 1959, Chapter 122, Section 9, as amended) is amended to read:

"68-2-14. ENFORCEMENT OF LAWS--INVESTIGATION OF VIOLATIONS.--

A. The forestry division of the energy, minerals and natural resources department is authorized to enforce all laws and rules [~~and regulations~~] relating to all forested, cut-over or brush lands lying within the state under the following circumstances:

[A.] (1) prevention and suppression of forest fires;

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~~[B.]~~ (2) logging and timber operations and practices;

~~[C.]~~ (3) trespass, waste and littering; and

~~[D.]~~ (4) conservation of ~~[commercial forest lands]~~ forests and forest resources and products. [~~In~~ addition]

B. The state forester, ~~[and]~~ all persons ~~[designated by him]~~ the state forester designates as peace officers and any other peace officers are authorized to go upon ~~[such lands]~~ forested, cut-over or brush lands lying within the state to ~~[make investigations concerning]~~ investigate violations of the ~~[laws, rules and regulations]~~ Forest Conservation Act and are given the necessary police powers to apprehend and arrest on warrant issued by any magistrate or judge of the state for violation of the ~~[laws, rules and regulations]~~ Forest Conservation Act or without warrant for violations thereof committed in their presence and shall not be liable to civil actions in trespass for acts done in discharge of their duties."

SECTION 10. Section 68-2-16 NMSA 1978 (being Laws 1959, Chapter 122, Section 11, as amended) is amended to read:

"68-2-16. RULES ~~[AND REGULATIONS]~~ OF DIVISION.--The forestry division of the energy, minerals and natural resources department is authorized to make and enforce rules ~~[and regulations]~~ not in conflict with any law now in force as it deems necessary for the prevention and suppression of forest

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[~~or brush~~] fires, [~~and~~] for the control of forest [~~pests~~]
insects or diseases and for the application of commercial or
silvicultural forest practices within the state. The [~~rule-~~
~~making~~] rulemaking power includes [~~but is not limited to~~] the
requiring of registration of sawmills, declaring of designated
areas to be high hazard fire areas and closing them to entry by
the general public for reasonable periods and requiring
[~~commercial~~] native forest vegetative types to be harvested or
treated in such manner as to support forest practices that
maintain and enhance the [~~economic~~] benefits of forests and
forest resources to New Mexico. Rules [~~and regulations~~] shall
be provided to all interested parties upon request. Nothing in
the Forest Conservation Act shall prevent a landowner
[~~hereafter~~] from converting forest vegetative types to
nonforest vegetative types for such purposes as range, wildlife
habitat, farming, surface mining or subdivision development;
provided, however, any slash resulting from such conversion
shall be treated in a manner that will minimize the spread of
forest fires and the possibility of insect or disease
epidemic."

SECTION 11. Section 68-2-22 NMSA 1978 (being Laws 1961,
Chapter 200, Section 1, as amended) is amended to read:

"68-2-22. CUTTING AND REMOVING WOODY MATERIAL WITHOUT
WRITTEN CONSENT.--

A. As used in this section:

(1) "owner" means any public agency, person,

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partnership, firm, corporation and recognized agents owning or having legal control to the surface rights of the land upon which the woody material is located and having legal authority to issue permits or enter into agreements for the disposal of the woody material; and

(2) "woody material" includes any live or dead evergreen, coniferous or deciduous tree, branch, bough, bush, sapling or shrub in its natural condition, trimmed or untrimmed, and with or without roots.

B. No person shall cut, remove, transport or sell any woody material without written consent of the owner or proof of ownership, whether the land is publicly or privately owned. The written consent shall contain a legal description of the land where the woody material is removed, the name and address of the legal owner, the volume or amount of material to be removed, the date of execution and the expiration date of the consent. In addition, any person purchasing woody material from another for the purpose of resale must possess a valid bill of sale containing the date of sale, the amount of material purchased and the name, address and signature of the seller. The written consent, bill of sale or a true copy shall be carried by every person in charge of cutting, removing, transporting or selling the woody material and shall be exhibited to any [~~officer of the law, forestry agent, forest ranger, forest patrolman or conservation~~] peace officer at [~~his~~] the officer's request [~~at any time~~]. This provision

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shall not apply to campers, picnickers, hunters and ~~[fishermen]~~
persons fishing who gather woody material for use in the
immediate vicinity of their campsite or private landowners
removing woody material from their own land for their personal
use."

SECTION 12. Section 68-2-24 NMSA 1978 (being Laws 1979,
Chapter 395, Section 9) is amended to read:

"68-2-24. FOREST LAND POLICY.--Recognizing that the
forest makes a vital contribution to New Mexico by providing
wood products, jobs, grazing, quality water, wildlife habitat,
young trees, taxes and other economic benefits, it is hereby
declared to be the public policy of the state to adopt forest
practices that maintain and enhance such benefits and such
resources and to recognize varying forest resources by
employing silvicultural planning, including fire prevention
~~[which]~~ that provides for the removal of trees in a manner that
provides reasonable assurance for the natural or artificial
regeneration of ~~[commercial]~~ native tree species; provided,
however, nothing in this section shall be in conflict with any
law now in force."

SECTION 13. Section 68-2-25 NMSA 1978 (being Laws 1979,
Chapter 395, Section 10) is amended to read:

"68-2-25. FOREST OWNER ASSISTANCE.--Upon the request of
any landowner, the state forester shall advise and encourage
the use of good management practices through an educational
program and by providing technical forestry assistance to any

landowner for specific sites prior to and during harvesting or other forestry-related activities."

SECTION 14. Section 68-2-26 NMSA 1978 (being Laws 1987, Chapter 143, Section 4) is amended to read:

"68-2-26. ENFORCEMENT--FOREST CONSERVATION ACT.--Any [~~officer of the law, forestry agent, forest ranger, forest patrolman or conservation~~] peace officer enforcing the provisions of the Forest Conservation Act may:

A. stop any vehicle or means of conveyance containing any woody material for the purpose of [~~making an~~] inspection and investigation;

B. inspect the woody material in any vehicle or other means of conveyance, including common carrier; [~~and~~]

C. seize and hold any woody material cut, removed, piled, transported or offered for sale in violation of this section. Upon determination by the appropriate court that a section of the Forest Conservation Act has been violated and the court's issuance of an order authorizing the sale, the forestry division of the energy, minerals and natural resources department shall sell the woody material and all money collected is to be deposited into the forest land protection revolving fund; and

D. seize and hold any property used in violation of this section and, upon determination of the appropriate court that a section of the Forest Conservation Act has been violated, keep or dispose of the property upon order of the

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district court. All money collected, if any, shall be deposited into the forest land protection revolving fund."

SECTION 15. 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 administration:

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

(2) to administer and fund 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

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projects;

(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."

SECTION 16. REPEAL.--Sections 68-2-19 and 68-2-23 NMSA 1978 (being Laws 1959, Chapter 122, Section 14 and Laws 1979, Chapter 395, Section 8, as amended) are repealed.

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