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FISCAL IMPACT REPORT

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| SPONSOR <u>McQueen/Nibert/Woods</u> | LAST UPDATED <u>2/27/23</u> ORIGINAL DATE <u>2/1/23</u> |
| SHORT TITLE <u>Forest Conservation Act Amendments</u> | BILL NUMBER <u>House Bill 195/aHENRC/aHF#1</u> |
| ANALYST <u>Sanchez</u> | |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|------------------------|------------------|------------------|------------------|-------------------|---------------------------|---------------|
| EMNRD Operating Budget | No fiscal impact | No fiscal impact | No fiscal impact | No fiscal impact | | |

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 State Land Office (SLO)
 Department of Homeland Security and Emergency Management (DHSEM)

SUMMARY

Synopsis of HFI#1 Amendment to House Bill 195

The House Floor amendments to House Bill 195 add language specifying that the application of the proposed changes to Section 68-2-8 NMSA 1978 (Police Power of the State Forestry Division) only applies to forest conservation, fire prevention, and post-fire forest rehabilitation services, not fire suppression activities and that this police power must be exercised in cooperation and pursuant to an agreement with the underlying landowner or land manager. The amendment resolves the concern raised by the State Land Office’s analysis of the HENRC Amendments to House Bill 195 (see below):

This amendment to HB195 addresses the State Land Office’s concerns that the ambiguous language in Section 6.A, which grants the [State Forestry] Division responsibility and authority to conduct forest conservation, fire prevention, and post-fire forest rehabilitation activities “whether *independently* or in cooperation with federal, state, or local agencies” (emphasis added), could conflict with existing law, which clearly recognizes the Commissioner of Public Lands’ authority over the management, care, custody, control and disposition of state trust lands. It also improves the bill by clarifying that the activities under Section 6.A must be conducted in coordination and agreement with any underlying landowner or land manager.

Synopsis of HENRC Amendment to House Bill 195

The House Energy and Natural Resources Committee (HENRC) amendments to House Bill 195 add a definition for “suppression” to section 5 and deletes two references to “prevention” from section 6(B). The definition of suppression includes “all activities to extinguish, limit, or contain forest fire spread.” The elimination of the word prevention in section 6 limits the police power of the State Forestry Division (SFD) on private lands to suppression activities only. These amendments will clarify that SFD’s police power on all nonfederal, nonmunicipal lands is limited to fire suppression activities and does not include fire prevention.

The State Land Office’s analysis expresses concerns about the amendment, and the language of the bill overall, stating:

Although the [bill] contemplates collaboration between the State Forestry Division and the State Land Office through the ability to enter into contracts and cooperative agreements, these provisions are permissive and do not require [SFD] to coordinate with and obtain permission from the Commissioner of Public Lands to perform activities on state trust lands. *See* Section 68-2-6 (Division authorization to enter into Forest Conservation Act contracts and cooperative agreements with the Commissioner of Public Lands), and Section 68-2-11 (contracts [SFD] and the Commissioner of Public Lands for protection of forest areas). While the Department’s current practice is to coordinate with and obtain authorization from the State Land Office for forestry-related projects on state trust land, there is no guarantee that this practice would continue if the bill is enacted as currently written and the [SFD’s] interpretation of its statutory authority changed under different leadership.

Synopsis of Original House Bill 195

House Bill 195 amends the Forest Conservation Act (Sections 68-2-1 through 68-2-27 NMSA 1978) to expand the responsibilities of the Healthy Forests program, also known as the State Forestry Division (SFD) of the Energy, Minerals and Natural Resources Department (EMNRD). The bill authorizes SFD to contract for and conduct forest fire prevention, suppression, and control activities and clarifies the authority of SFD to conserve forests and forest resources on all nonfederal, nonmunicipal lands in the state. HB195 clarifies and defines the existing statutory language while removing references to federal statutes that have been repealed and replacing them with references to current statutes.

The amendments offered in House Bill 195 grant SFD new authority to conserve forests and forest resources, maintain and improve forest health, conduct post-fire slope stabilization, erosion control, riparian restoration, seeding and reforestation of burned areas, research forestry and forest fires, conduct urban and community forestry, establish nurseries, and furnish forestry and forest fire-related technical assistance to New Mexicans, including through technical advice and projects related to the mitigation of or adaptation to conditions caused by climate change. House Bill 195 repeals Sections 68-2-19 (Fire protection cooperative contract receipts; special suspense fund; general forest conservation fund) and 68-2-23, NMSA 1978 (Definitions).

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

In the analyses received from EMNRD, DHSEM, and SLO, the agencies concur that there will be no measurable negative fiscal impact from the adoption of the amendments. Further, EMNRD’s analysis included reference to federal funding the state is currently not eligible to receive for forestry and post-wildfire forest management activities, including monies available to states in the Infrastructure Investment and Jobs Act (2021) and the Inflation Reduction Act (2022). Finally, by clarifying SFD’s ability to serve as a contracting agency for other entities to conduct forestry-related activities, the agency believes it will positively impact their ability to manage wildfires during emergencies and conduct post-wildfire remediation activities that are currently outside of their statutorily permitted scope.

SIGNIFICANT ISSUES

The Forest Conservation Act (Sections 68-2-1 through 68-2-27, NMSA 1978) has been amended five times since its original passage in 1939, with the last updates coming in 1987. According to the analysis offered by EMNRD, the current statute restricts SFD’s ability to conduct “activities needed for commercial forestry and fire suppression.” Additionally, the amendments provided in House Bill 195 will make New Mexico eligible for additional federal funding, including grants for forestry and fire-risk reduction programs included in recent federal legislation.

PERFORMANCE IMPLICATIONS

EMNRD stated that the amendments offered in House Bill 195 would improve the SFD’s ability to meet its performance goals and conduct post-wildfire recovery activities currently outside its statutorily permitted scope of work.

SIGNIFICANT ISSUES

In its analysis of the HENRC amendment to House Bill 195, the State Land Office (SLO) suggests:

HB195 should be amended to clarify that, with respect to state trust lands, the authorization provided in Section 6.A is to be exercised in cooperation with the Commissioner of Public Lands.

SLO also suggests:

On page 6, after paragraph C, insert “(D) The authorization provided in Section 6.A with respect to forest conservation and fire prevention efforts is to be exercised in cooperation with the Commissioner of Public Lands.”

SLO’s analysis proposed these amendments to ensure cooperation between SFD and the Commissioner of Public Lands continues. Without these changes, SLO’s analysis expressed concerns regarding the willingness of SFD to collaborate during fire suppression activities on state trust lands, creating a potential conflict with SLO’s “legal authority over the management, care, custody, control, and disposition of those lands.”