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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>SCONC</u>	<b>LAST UPDATED</b> <u>03/08/23</u>
<b>SHORT TITLE</b> <u>Prohibit Prescribed Burning During Spring</u>	<b>ORIGINAL DATE</b> <u>01/23/23</u>
	<b>BILL NUMBER</b> <u>CS/Senate Bill 21/ec/SCONCS/aSJC/aSF1#1/aSFI#2/aHENRC</u>
	<b>ANALYST</b> <u>Sanchez</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMNRD (Federal Funds)	No fiscal impact	(\$5,000.0)	(\$5,000.0)	(\$10,000.0)	Nonrecurring	General Fund

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

### Sources of Information

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)  
State Land Office (SLO)  
Department of Public Safety (DPS)  
New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of HENRC Amendment to Senate Bill 21

The House Energy, Environment and Natural Resources Committee amendments to the Senate Conservation Committee Substitute for SB21 strike the word “conducted” from the section of the act describing the conditions under which prescribed burns may be authorized and insert “started” instead. This change will prevent confusion as to the dispositions of controlled burns which have already begun and will give the entities conducting controlled burns cover if an already initiated burn is taking place when a red flag warning is issued.

### Synopsis of SFL#1 and SFI#2 Amendments to Senate Bill 21

The Senate Floor amendments to the Senate Conservation Committee Substitute for SB21 strike the words “during the spring” from the act description and insert “during a red flag warning” instead. This change exacerbates the concerns expressed by the Energy, Minerals and Natural Resources Department’s State Forestry Division, which previously cited problems this provision

will cause with using federal funding for forestry work, and the difficulty this bill will cause when trying to adhere to best practices for controlled burns.

The Senate Floor amendments also added an emergency clause to the bill.

### **Synopsis of SJC Amendment to Senate Bill 21**

The Senate Judiciary Committee amendment to the Senate Conservation Committee Substitute for SB21 strikes language limiting the provisions in Section C’s effective dates to “between March 1 and May 31 of any year.” This change will prohibit prescribed burns on any day the national weather service has issued a red flag warning, regardless of the time of year. This change will likely expand the concerns expressed by the Energy, Minerals and Natural Resources Department, which had previously cited potential problems with federal funding and forestry best practices caused by the original bill and the SJC committee substitute.

### **Synopsis of SCONC Committee Substitute for Senate Bill 21**

The Senate Conservation Committee Substitute for SB21 (CS/SB21) amends Section 68-5-3 NMSA 1978 (the Prescribed Burn Act) to prohibit prescribed burning activities between March 1 and May 31 of any year if the national weather service has issued a red flag warning for that day for the area where the prescribed burn is planned to take place.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

## **FISCAL IMPLICATIONS**

In its analysis, the Energy, Minerals and Natural Resources Department (EMNRD) expressed concerns that CS/SB21 would create issues with the administration of federal funding from the hazardous fuel treatment, stating:

Approximately \$5 million in project allocation funding for treatment in high priority watersheds and forests across the state could be threatened by SB21 as this bill would place strong restrictions on prescribed burning treatments conducted by state or local governments or private landowners from March 1 to May 31 of each year, a time in which prescribed burning is often – though not always – an appropriate treatment technique.

The State Land Office (SLO) echoed the concerns expressed by EMNRD, and both agencies pointed out that, as written, CS/SB21 would restrict all fuel treatments that use mechanized or hand-operated tools and equipment because they produce sparks.

Both agencies cite the extensive safety precautions incorporated into their respective burn plans and specifically mention their efforts to collaborate with state, local, and private entities during prescribed burns.

NMAG and the Department of Public Safety (DPS) indicate there would be no fiscal impact on their respective agencies.

## **SIGNIFICANT ISSUES**

In its analysis, the Energy, Minerals and Natural Resources Department (EMNRD) expressed concerns that a blanket prohibition on prescribed burns in the spring using a regionalized measure such as red flag warnings would ignore conditions on the ground in more localized areas. The department also explained that CS/SB21 might risk the department's ability to fulfill its obligations under agreements utilizing federal funding for hazardous fuel treatment within high-priority forests and watersheds throughout the state.

## **PERFORMANCE IMPLICATIONS**

Both Energy, Minerals and Natural Resources Department (EMNRD) and the State Land Office (SLO) have performance measures that include the "number of acres of forest treated". Both agencies expressed concerns that prohibiting prescribed burning during what is usually an ideal window of time to conduct such burns would reduce their agency's ability to achieve their respective performance targets.

## **TECHNICAL ISSUES**

The State Land Office (SLO) points out that Section 68-5-3(A) NMSA 1978 says, "Prescribed burning is considered in the public interest and not a public or private nuisance." Which, the agency contends, makes it unclear whether the proposed ban is intended as an exception.

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