

Senate Bill 1/aSCONC/aSPAC -- Page 2

The Senate Conservation Committee (SCONC) amendment makes three substantive changes to Senate Bill 1. First, the amendment deletes the “FINDINGS” subsection 1(a) in its entirety. Second, it requires the counties to consult not only with the State Forester, but also with the U.S. Forest Service’s regional forester when developing mitigation plans. Finally, the amendment removes the counties’ authority to have unrestricted access to the National Forests and removes counties or their agents’ immunity from civil or criminal liabilities related to their actions to improve forest health. The amendment also deletes the subsection 1(e) that allows counties to generate revenue in an effort to recover or recoup the costs associated with improving forest health in surrounding national forest land.

Synopsis of Original Bill

Containing two sections, Senate Bill 1 would create a new law to address forest health concerns within national forests throughout New Mexico and would grant counties authority to take necessary actions to improve forested acres. Section 2 contains an emergency clause. Details of Section 1 are provided below.

Subsection A: The subsection provides the Legislature’s findings about forest health conditions in New Mexico. Particularly, the bill highlights the impact of the devastating fire season that New Mexico experienced in 2000. As the subsection identifies, the lack of or failed forest health management practices, in part, have contributed to this problem. The bill suggests that the State of New Mexico should exercise its police power to ensure that the state minimizes its wildland fire risk.

Subsection B: The subsection declares a disaster within those areas of the national forests in New Mexico that were ravaged by fire last year or by areas identified by County Commissions that have been poorly managed and that could produce similarly devastating fires as experienced in 2000. The subsection also states that the disaster requires immediate and full exercise of the state’s police powers to ensure these forest health management remedies are implemented, effectively.

Subsection C: The subsection requires the County Commissions to work with the State Forester to survey those acres of land in question and develop mitigation plans for improving its forest health. After developing the plan and holding the necessary public hearings, the County may take those actions necessary to improve surrounding national forest land, including hiring qualified New Mexico-based contractors, who employ New Mexico residents.

Subsection D: The subsection gives any agent of the county full and unfettered access to national forests and relieves these agents from any criminal or civil liabilities related to their actions on improving forest health.

Subsection E: The subsection gives the counties the authority to receive royalties, license fees, or other compensation that may result for improving forest health on these lands. The subsection states that the first use of these revenues will be used for improving forest land, the second use will be to create a special fund of excess revenues to address these concerns in the future, and the third use, if any amounts remain, will be to forward the funds to the federal government.

Significant Issues

Enactment of Senate Bill 1 could preempt federal law. The bill invokes “state’s police power” clause that is often used to qualify for an exemption to the federal preemption doctrine, thus avoiding a federal conflict with federal jurisdiction. Additionally, the county, a subdivision of the state, seeks to assert jurisdiction into national forests, a domain reserved solely and exclusively to the federal government.

FISCAL IMPLICATIONS

Enactment of Senate Bill 1 will have a direct fiscal impact on counties, who will have the authority to collect revenues for any practices related to improving forest health. However, an estimation of the potential revenue has not been developed.

Though an appropriation is not provided for in the bill, it will have a fiscal impact on state agencies, particularly the Energy, Minerals and Natural Resources Department (EMNRD), which is the mother agency of the State Forestry Division.

The bill requires the State Forester to collaborate with counties to develop mitigation plans. This activity will require funding for in-state travel, specifically, and potentially, for supplies and materials. However, the travel will not be an additional burden on the agency because working with counties and communities is part of the EMNRD statutory mission, and the LFC recommendation for the EMNRD provides sufficient funding for this purpose.

If enacted, there is a possibility that the federal government may withhold federal funds, such as the Pittman-Robertson and Dingell-Johnson monies that partially fund the Department of Game and Fish (DGF).

ADMINISTRATIVE IMPLICATIONS

Enactment of Senate Bill 1 would have an administrative impact on counties and the EMNRD Forestry Division. The bill outlines many of the procedures for counties to implement its provisions, but certainly, each of the counties would have to promulgate and act upon new rules and regulations. A positive indirect administrative impact of the bill is that it will require the counties to work more closely together with the State Forestry Division.

If enacted, the provisions of the bill may result in disagreements that would be challenged in the courts.

MFV/prr:ar