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SENATE BILL 28

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2011

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO PUBLIC SAFETY; AMENDING AND ENACTING SECTIONS OF
THE NMSA 1978 TO PROVIDE THE GOVERNOR, MUNICIPALITIES AND
COUNTIES WITH AUTHORITY TO PROCLAIM A STATE OF EMERGENCY TO BAN
OR RESTRICT THE SALE AND USE OF FIREWORKS IN ANY AREA WHERE THE
NATIONAL FIRE DANGER RATING IS HIGH, VERY HIGH OR EXTREME;
DECLARING AN EMERGENCY.

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

SECTION 1. Section 12-10-4 NMSA 1978 (being Laws 1959,
Chapter 190, Section 5, as amended) is amended to read:

"12-10-4. ALL HAZARD EMERGENCY MANAGEMENT--POWERS OF THE
GOVERNOR.--

A. The governor shall have general direction and
control of the activities of the homeland security and
emergency management department and shall be responsible for

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1 carrying out the provisions of the All Hazard Emergency
2 Management Act and, in the event of any man-made or natural
3 disaster causing or threatening widespread physical or economic
4 harm that is beyond local control and requiring the resources
5 of the state, shall exercise direction and control over any and
6 all state forces and resources engaged in emergency operations
7 or related all hazard emergency management functions within the
8 state.

9 B. In carrying out the provisions of the All Hazard
10 Emergency Management Act, the governor is authorized to:

11 (1) cooperate with the federal government and
12 agree to carry out all hazard emergency management
13 responsibilities delegated in accordance with existing federal
14 laws and policies and cooperate with other states and with
15 private agencies in all matters relating to the all hazard
16 emergency management of the state and nation;

17 (2) issue, amend or rescind the necessary
18 orders, rules and procedures to carry out the provisions of the
19 All Hazard Emergency Management Act;

20 (3) provide those resources and services
21 necessary to avoid or minimize economic or physical harm until
22 a situation becomes stabilized and again under local self-
23 support and control, including the provision, on a temporary,
24 emergency basis, of lodging, sheltering, health care, food,
25 transportation or shipping necessary to protect lives or public

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1 property; or for any other action necessary to protect the
2 public health, safety and welfare;

3 (4) prepare a comprehensive emergency
4 operations plan and program and to integrate the state
5 emergency operations plan and program with the emergency
6 operations plans and programs of the federal government and
7 other states and to coordinate the preparation of emergency
8 operations plans and programs by the political subdivisions of
9 this state;

10 (5) procure supplies and equipment, to
11 institute training programs and public information programs and
12 to take all necessary preparatory actions, including the
13 partial or full mobilization of state and local government
14 forces and resources in advance of actual disaster, to ensure
15 the furnishing of adequately trained and equipped emergency
16 forces of government and auxiliary personnel to cope with
17 disasters resulting from enemy attack or other causes; ~~and~~

18 (6) enter into mutual aid agreements with
19 other states and to coordinate mutual aid agreements between
20 political subdivisions of the state; and

21 (7) proclaim a state of emergency that
22 temporarily bans or restricts the sale or use, or both the sale
23 and use, of fireworks, as defined in the Fireworks Licensing
24 and Safety Act, in an area where the fire danger rating is
25 deemed to be high, very high or extreme, as determined by the

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1 national fire danger rating system."

2 SECTION 2. A new section of the Fireworks Licensing and
3 Safety Act is enacted to read:

4 "[NEW MATERIAL] GOVERNOR PROCLAMATION--NATIONAL FIRE
5 DANGER RATING SYSTEM--FIREWORKS.--Pursuant to Section 12-10-4
6 NMSA 1978, the governor may proclaim a state of emergency that
7 temporarily bans or restricts the sale or use, or both the sale
8 and use, of fireworks in an area where the fire danger rating
9 is deemed to be high, very high or extreme, as determined by
10 the national fire danger rating system. The proclamation
11 becomes effective immediately upon its signing by the governor,
12 but the governor shall give public notice of its contents
13 through the public press and other news media. The
14 proclamation shall be effective for thirty days, and the
15 governor may issue succeeding proclamations if conditions
16 warrant. The proclamation shall explain restrictions on the
17 sale and use of fireworks and the permitted sale and use of
18 fireworks and the geographic extent of the proclamation's
19 provisions. The proclamation may be modified or rescinded by
20 the governor within its thirty-day period upon a finding that
21 the fire danger rating is deemed to be less than high as
22 determined by the national fire danger rating system. The
23 governor shall consult with Indian nations, tribes or pueblos
24 that include an area where the fire danger rating is deemed to
25 be high, very high or extreme, as determined by the national

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1 fire danger rating system. The governor's proclamation may be
2 more restrictive within that jurisdiction than restrictions
3 imposed by a municipality or a county but shall not be less
4 restrictive than the municipality or county."

5 SECTION 3. Section 60-2C-2 NMSA 1978 (being Laws 1989,
6 Chapter 346, Section 2, as amended) is amended to read:

7 "60-2C-2. DEFINITIONS.--As used in the Fireworks
8 Licensing and Safety Act:

9 A. "aerial shell" means a cylindrical or spherical
10 cartridge containing a lift charge, burst charge and effect
11 composition. Upon firing from a reloadable tube, the lift
12 charge is consumed and the cartridge is expelled into the air;

13 B. "aerial shell kit-reloadable tube" means a
14 package or kit containing a cardboard, high-density
15 polyethylene or equivalent launching tube and not more than
16 twelve small aerial shells. Each aerial shell is limited to a
17 maximum of sixty grams of total chemical composition, including
18 lift charges, and the maximum diameter of each shell shall not
19 exceed one and three-fourths inches;

20 C. "bosque" means a cottonwood corridor adjacent to
21 a river;

22 D. "chaser" means a paper or cardboard tube venting
23 out the fuse end of the tube that contains no more than twenty
24 grams of chemical composition and travels along the ground,
25 often producing a whistling effect or other noise; an explosive

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1 composition not to exceed fifty milligrams may be included to
2 produce a report;

3 E. "chemical composition" includes all pyrotechnic
4 and explosive composition contained in a fireworks device but
5 does not include inert materials such as clay used for plugs or
6 organic matter such as rice hulls used for density control;

7 F. "cone fountain" means a cardboard or heavy paper
8 cone containing no more than fifty grams of pyrotechnic
9 composition that has the same effect as a cylindrical fountain.
10 When more than one cone is mounted on a common base, total
11 pyrotechnic composition shall not exceed two hundred grams;

12 G. "crackling device" means a sphere or paper tube
13 that contains no more than twenty grams of pyrotechnic
14 composition that produces a flash of light and a mild, audible
15 crackling effect upon ignition, which effect is not considered
16 to be an explosion. Crackling devices are not subject to the
17 fifty-milligram limit of firecrackers;

18 H. "cylindrical fountain" means a cylindrical tube
19 containing not more than seventy-five grams of pyrotechnic
20 composition that produces a shower of colored sparks and
21 sometimes a whistling effect or smoke. The device may be
22 provided with a spike for insertion into the ground or a wood
23 or plastic base for placing on the ground or a wood or
24 cardboard handle to be hand-held. When more than one tube is
25 mounted on a common base, total pyrotechnic composition shall

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1 not exceed two hundred grams;

2 I. "display distributor" means a person, firm or
3 corporation selling display fireworks;

4 J. "display fireworks" means devices primarily
5 intended for commercial displays that are designed to produce
6 visible or audible effects by combustion, deflagration or
7 detonation, including salutes containing more than one hundred
8 thirty milligrams of explosive composition; aerial shells
9 containing more than forty grams of chemical composition
10 exclusive of lift charge; and other exhibition display items
11 that exceed the limits for permissible fireworks;

12 K. "distributor" means a person, firm or
13 corporation selling fireworks to wholesalers and retailers for
14 resale;

15 L. "explosive composition" means a chemical
16 compound or mixture, the primary purpose of which is to
17 function by explosion, producing an audible effect in a
18 fireworks device;

19 M. "firecracker" means a small, paper-wrapped or
20 cardboard tube containing no more than fifty milligrams of
21 explosive composition that produces noise and a flash of light;
22 provided that firecrackers used in aerial devices may contain
23 up to one hundred thirty milligrams of explosive composition
24 per report;

25 N. "fireworks" means devices intended to produce a

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1 visible or audible effect by combustion, deflagration or
2 detonation [~~and are categorized as "permissible fireworks" or~~
3 ~~"display fireworks"~~] but does not include [~~novelties or~~]
4 theatrical pyrotechnics articles;

5 O. "flitter sparkler" means a narrow paper tube
6 attached to a stick or wire and filled with no more than five
7 grams of pyrotechnic composition that produces color and sparks
8 upon ignition and the paper at one end of the tube is ignited
9 to make the device function;

10 P. "ground spinner" means a small, rapidly spinning
11 device containing no more than twenty grams of pyrotechnic
12 composition venting out an orifice usually on the side of the
13 tube that when ignited produces a shower of sparks and color.
14 "Ground spinner" is similar in operation to a wheel but is
15 intended to be placed flat on the ground and ignited;

16 Q. "helicopter" or "aerial spinner" means a tube
17 containing no more than twenty grams of chemical composition
18 with a propeller or blade attached that spins rapidly as it
19 rises into the air with a visible or audible effect sometimes
20 produced at or near the height of flight;

21 R. "illuminating torch" means a cylindrical tube
22 containing no more than one hundred grams of pyrotechnic
23 composition that produces a colored flame upon ignition and may
24 be spiked, based or hand-held. When more than one tube is
25 mounted on a common base, total pyrotechnic composition shall

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1 not exceed two hundred grams;

2 S. "manufacturer" means a person, firm or
3 corporation engaged in the manufacture of fireworks;

4 T. "mine" or "shell" means a heavy cardboard or
5 paper tube usually attached to a wooden or plastic base and
6 containing no more than sixty grams of total chemical
7 composition, including lift charges, per tube that individually
8 expels pellets of pressed pyrotechnic composition that burn
9 with bright color in a star effect, or other devices propelled
10 into the air, and that contains components producing reports
11 containing a maximum one hundred thirty milligrams of explosive
12 composition per report. A mine may contain more than one tube,
13 but the tubes must fire in sequence upon ignition of one
14 external fuse and must be a dense-packed collection of mine or
15 shell tubes and the total chemical composition, including lift
16 charges, shall not exceed two hundred grams;

17 U. "missile-type rocket" means a device similar to
18 a stick-type rocket in size, composition and effect that uses
19 fins rather than a stick for guidance and stability and that
20 contains no more than twenty grams of chemical composition;

21 V. "multiple tube devices" means a device that
22 contains more than one cardboard tube and the ignition of one
23 external fuse that causes all of the tubes to function in
24 sequence. The tubes are individually attached to a wood or
25 plastic base or are dense-packed and are held together by glue,

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1 wire, string or other means that securely hold the tubes
2 together during operation. A maximum total weight of five
3 hundred grams of pyrotechnic composition shall be permitted;
4 provided that the tubes are securely attached to a wood or
5 plastic base and are separated from each other on the base by a
6 distance of at least one-half inch. The connecting fuses on
7 multiple tube devices shall be fused in sequence so that the
8 tubes fire sequentially rather than all at once;

9 W. "novelties" means devices containing small
10 amounts of pyrotechnic or explosive composition that produce
11 limited visible or audible effects, including party poppers,
12 snappers, toy smoke devices, snakes, glowworms, sparklers or
13 toy caps, and devices intended to produce unique visual or
14 audible effects that contain sixteen milligrams or less of
15 explosive composition and limited amounts of other pyrotechnic
16 composition, including cigarette loads, trick matches,
17 explosive auto alarms and other trick noisemakers;

18 X. "permissible fireworks" or "consumer fireworks"
19 means fireworks legal for sale to and use in New Mexico by the
20 general public that comply with the latest construction,
21 performance, composition and labeling requirements established
22 by the United States consumer product safety commission and the
23 United States department of transportation;

24 Y. "pyrotechnic composition" means a chemical
25 mixture that on burning and without explosion produces visible

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1 or brilliant displays or bright lights or whistles or motion;

2 Z. "retailer" means a person, firm or corporation
3 purchasing fireworks for resale to consumers;

4 AA. "roman candle" means a heavy paper or cardboard
5 tube containing no more than twenty grams of chemical
6 composition that individually expels pellets of pressed
7 pyrotechnic composition that burn with bright color in a star
8 effect;

9 BB. "specialty retailer" means a person, firm or
10 corporation purchasing permissible fireworks for year-round
11 resale in permanent retail stores whose primary business is
12 tourism;

13 CC. "stick-type rocket" means a cylindrical tube
14 containing no more than twenty grams of chemical composition
15 with a wooden stick attached for guidance and stability that
16 rises into the air upon ignition and produces a burst of color
17 or sound at or near the height of flight;

18 DD. "theatrical pyrotechnics articles" means a
19 pyrotechnic device for professional use in the entertainment
20 industry similar to permissible fireworks or consumer fireworks
21 in chemical composition and construction but not intended and
22 labeled for consumer use;

23 EE. "toy smoke device" means a small plastic or
24 paper item containing no more than one hundred grams of
25 pyrotechnic composition that produces white or colored smoke as

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1 the primary effect;

2 FF. "wheel" means a pyrotechnic device that is made
3 to attach to a post or other surface and that revolves,
4 producing a shower of color and sparks and sometimes a
5 whistling effect and that may have one or more drivers, each of
6 which contains no more than sixty grams of pyrotechnic
7 composition and the total wheel contains no more than two
8 hundred grams total pyrotechnic composition;

9 GG. "wholesaler" means a person, firm or
10 corporation purchasing fireworks for resale to retailers; and

11 HH. "wildlands" means lands owned by the governing
12 body of a county or municipality that are designated for public
13 recreational purposes and that are covered wholly or in part by
14 timber, brush or native grass."

15 SECTION 4. Section 60-2C-8.1 NMSA 1978 (being Laws 1997,
16 Chapter 17, Section 9, as amended) is amended to read:

17 "60-2C-8.1. [~~EXTREME OR SEVERE DROUGHT CONDITIONS~~]
18 NATIONAL FIRE DANGER RATING--RESTRICTED SALE AND USE.--

19 A. The governing body of a municipality may hold a
20 hearing to determine if fireworks restrictions should be
21 imposed within the boundaries of the incorporated municipality
22 [~~affected by extreme or severe drought conditions~~] where the
23 fire danger rating is deemed to be high, very high or extreme,
24 as determined by the national fire danger rating system. The
25 findings of the governing body shall be based on current

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1 ~~[drought indices published by the national weather service and~~
2 ~~any other relevant information supplied by]~~ fire danger ratings
3 of the national fire danger rating system of the United States
4 forest service.

5 B. Pursuant to any hearing under Subsection A of
6 this section, the governing body of a municipality shall issue
7 a proclamation declaring ~~[extreme or severe drought conditions]~~
8 fireworks restrictions within the boundaries of the
9 incorporated municipality if the governing body determines
10 ~~[such conditions exist]~~ that the fire danger rating is deemed
11 to be high, very high or extreme, as determined by the national
12 fire danger rating system. The governing body's proclamation

13 ~~[(1) shall ban the sale and use of~~
14 ~~missile-type rockets, helicopters, aerial spinners, stick-type~~
15 ~~rockets and ground audible devices within the affected drought~~
16 ~~area; and~~

17 ~~(2) shall give the governing body the power~~
18 ~~to:~~

19 ~~(a) limit the use within its~~
20 ~~jurisdiction of any fireworks not listed in Paragraph (1) of~~
21 ~~this subsection to areas that are paved or barren or that have~~
22 ~~a readily accessible source of water for use by the homeowner~~
23 ~~or the general public;~~

24 ~~(b) ban the use of all fireworks within~~
25 ~~wildlands in its jurisdiction, after consultation with the~~

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1 ~~state forester; and~~

2 (e) shall ban or restrict the sale or
3 use, or both the sale and use, of [~~display~~] fireworks.

4 C. The municipal governing body's proclamation
5 declaring [~~an extreme or severe drought condition~~] fireworks
6 restrictions shall be issued no less than twenty days prior to
7 a holiday for which fireworks may be sold. The proclamation
8 shall explain restrictions on the sale or use of fireworks and
9 permitted sales or uses of fireworks.

10 D. A municipal governing body's proclamation shall
11 be effective for thirty days, and the governing body may issue
12 succeeding proclamations if [~~extreme or severe drought~~
13 ~~conditions~~] the national fire danger ratings warrant. A
14 proclamation may be modified or rescinded within its thirty-day
15 period by the governing body upon conducting an emergency
16 hearing to determine if [~~weather conditions~~] the national fire
17 danger ratings have improved.

18 E. The governing body of a county may hold a
19 hearing to determine if fireworks restrictions should be
20 imposed within the unincorporated portions of the county
21 [~~affected by extreme or severe drought conditions~~] where the
22 fire danger rating is deemed to be high, very high or extreme,
23 as determined by the national fire danger rating system. The
24 findings of the governing body shall be based on current
25 [~~drought indices published by the national weather service and~~

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1 ~~any other relevant information supplied by~~ fire danger ratings
2 of the national fire danger rating system of the United States
3 forest service.

4 F. Pursuant to any hearing under Subsection E of
5 this section, the governing body of a county shall issue a
6 proclamation declaring ~~[extreme or severe drought conditions]~~
7 fireworks restrictions within the unincorporated portions of
8 the county if the governing body determines ~~[such conditions~~
9 ~~exist]~~ that the fire danger rating is deemed to be high, very
10 high or extreme, as determined by the national fire danger
11 rating system. The governing body's proclamation

12 ~~[(1) shall ban the sale and use of~~
13 ~~missile-type rockets, helicopters, aerial spinners, stick-type~~
14 ~~rockets and ground audible devices within the affected drought~~
15 ~~area; and~~

16 ~~(2) shall give the governing body the power~~
17 ~~to:~~

18 ~~(a) limit the use within its~~
19 ~~jurisdiction of any fireworks not listed in Paragraph (1) of~~
20 ~~this subsection to areas that are paved or barren or that have~~
21 ~~a readily accessible source of water for use by the homeowner~~
22 ~~or the general public;~~

23 ~~(b) ban the use of all fireworks within~~
24 ~~wildlands in its jurisdiction, after consultation with the~~
25 ~~state forester; and~~

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(e)] shall ban or restrict the sale or use, or both the sale and use, of [~~display~~] fireworks.

G. The county governing body's proclamation declaring [~~an extreme or severe drought condition~~] fireworks restrictions shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale [~~or~~] and use of fireworks and permitted sales [~~or~~] and uses of fireworks.

H. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty days, and the county governing body may issue succeeding proclamations if [~~extreme or severe drought conditions~~] the national fire danger ratings warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if [~~weather conditions~~] the national fire danger ratings have improved."

SECTION 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.