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HOUSE BILL 57

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Matthew McQueen and Gail Armstrong  
and Peter Wirth and Pat Woods

AN ACT

RELATING TO PRESCRIBED BURNING; ENACTING THE PRESCRIBED BURNING  
ACT; ALLOWING PRIVATE LANDOWNERS TO CONDUCT PRESCRIBED BURNS;  
PROVIDING FOR PRESCRIBED BURN PERMITS; LIMITING CIVIL  
LIABILITY; INSTITUTING A PRESCRIBED BURN MANAGER CERTIFICATION  
PROGRAM; PROVIDING FOR PRESCRIBED BURN TRAINING; PROVIDING FOR  
THE ESTABLISHMENT AND DISTRIBUTION OF FEES; EXPANDING USES OF  
THE FOREST LAND PROTECTION REVOLVING FUND.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 8 of this act may be cited as the "Prescribed Burning  
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Prescribed Burning Act:

A. "certified prescribed burn manager" means a

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1 person certified pursuant to the prescribed burn manager  
2 certification program;

3 B. "department" means the energy, minerals and  
4 natural resources department;

5 C. "division" means the forestry division of the  
6 department;

7 D. "extension service" means the New Mexico state  
8 university cooperative extension service;

9 E. "pile burning" means the burning of vegetation,  
10 usually sticks, limbs or boles of trees and brush, resulting  
11 from land management activities, that have been stacked in  
12 piles, but does not mean the burning of a single or few small  
13 piles of yard waste or pruning debris on an individual's  
14 property; and

15 F. "prescribed burn" means the controlled  
16 application of fire to existing vegetative fuels through pile  
17 burning or the burning of vegetation over predefined areas  
18 under appropriate weather and environmental conditions for  
19 purposes of community protection, watershed resilience,  
20 silviculture, wildland fire hazard reduction, fuels reduction,  
21 rangeland improvement, wildlife management, habitat  
22 improvement, invasive species management and ecological  
23 maintenance or restoration.

24 SECTION 3. [NEW MATERIAL] PRESCRIBED BURN USE.--

25 A. Prescribed burning is considered in the public

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1 interest and not a public or private nuisance.

2 B. A private landowner shall have a right to  
3 conduct a prescribed burn on the landowner's property, except  
4 when the state forester or a county or municipality issues  
5 restrictions prohibiting a prescribed burn because of drought  
6 conditions; provided that the prescribed burn is conducted with  
7 appropriate precautionary measures, including: the use of  
8 sufficient personnel and equipment; the prior notification of  
9 local fire officials; burn and contingency planning; and the  
10 use of appropriate prescribed burn techniques that cause the  
11 fire to be confined to a predetermined area.

12 SECTION 4. [NEW MATERIAL] CIVIL LIABILITY.--

13 A. A private landowner or a private landowner's  
14 agent, contractor or legally authorized designee who is a  
15 certified prescribed burn manager and who conducts a prescribed  
16 burn is liable for civil damages to property or injury caused  
17 by the prescribed burn, including the reignition of a  
18 previously contained prescribed burn, if that person was  
19 negligent in starting, controlling or extinguishing the  
20 prescribed burn.

21 B. A private landowner or a private landowner's  
22 agent, contractor or legally authorized designee who is not a  
23 certified prescribed burn manager and who conducts a prescribed  
24 burn is liable for double civil damages to property or injury  
25 caused by the prescribed burn, including the reignition of a

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1 previously contained prescribed burn, if that person was  
2 negligent in starting, controlling or extinguishing the  
3 prescribed burn.

4 SECTION 5. [NEW MATERIAL] MODEL PRESCRIBED BURN

5 PERMITS.--The department shall promulgate rules establishing a  
6 model prescribed burn permit for use by counties or  
7 municipalities. The rules shall provide for required terms and  
8 conditions of a prescribed burn permit, including:

9 A. common terminology and definitions;

10 B. standards for data collection regarding the  
11 ownership of land, fuels used, size of the prescribed burn,  
12 location of the prescribed burn and entity conducting the  
13 prescribed burn;

14 C. the types of prescribed burning authorized by  
15 the permit;

16 D. procedures to coordinate with smoke management  
17 permits issued by the department of environment;

18 E. requirements for the distance of the prescribed  
19 burn from structures, buildings and fences;

20 F. the number of acres and estimated number of burn  
21 piles authorized under the permit;

22 G. requirements for notification of the public and  
23 of appropriate personnel, such as fire dispatch personnel, fire  
24 department personnel and county or municipal fire marshals,  
25 prior to and upon ignition and termination of the prescribed

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1 burn;

2 H. procedures to permit prescribed burns that cross  
3 jurisdictions; and

4 I. procedures to aggregate permit data and report  
5 annually on the effectiveness of the model prescribed burn  
6 permit.

7 SECTION 6. [NEW MATERIAL] CRITERIA FOR COUNTIES OR  
8 MUNICIPALITIES ISSUING PRESCRIBED BURN PERMITS.--A county or  
9 municipality may adopt an ordinance to require a private  
10 landowner to obtain a permit to conduct a prescribed burn. A  
11 county or municipality that requires landowners to obtain a  
12 permit to conduct a prescribed burn shall use the model  
13 prescribed burn permit adopted by the department.

14 SECTION 7. [NEW MATERIAL] PRESCRIBED BURN MANAGER  
15 CERTIFICATION.--

16 A. The division shall create a prescribed burn  
17 manager certification program accessible to private landowners  
18 and private landowners' agents, contractors or legally  
19 authorized designees who conduct prescribed burns. The  
20 certification program shall include training, which shall be  
21 provided by the extension service, on all relevant aspects of  
22 prescribed burn, including legal requirements, safety, weather,  
23 fire behavior, smoke management, prescribed burn techniques,  
24 public relations, planning and contingencies.

25 B. The department shall adopt rules to create the

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1 prescribed burn manager certification program, including the  
2 training and certification of certified prescribed burn  
3 managers; training components and engagement of subject matter  
4 experts; application processes; qualification for and terms and  
5 durations of certification; types of certification, if  
6 applicable; oversight of the program; grounds and processes for  
7 renewal, suspension and revocation of certifications; and  
8 application, certification and renewal fees.

9 C. The department, by rule, may establish a fee at  
10 an amount not to exceed the amount required to recover costs  
11 that the division incurs in providing certification and  
12 processing applications for persons seeking certification as  
13 certified prescribed burn managers pursuant to this section.  
14 All proceeds from that fee shall be deposited in the forest  
15 land protection revolving fund.

16 D. Nothing in this section may be construed as  
17 creating a mandatory prescribed burn manager certification  
18 requirement to conduct prescribed burning.

19 SECTION 8. [NEW MATERIAL] PRESCRIBED BURN TRAINING.--The  
20 extension service shall provide the training required for  
21 prescribed burn manager certification as specified in rules  
22 adopted by the department. The extension service may collect  
23 fees for providing the training. The fees shall not exceed the  
24 amount required to recover costs that the extension service  
25 incurs in providing the training.

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1           SECTION 9. Section 30-32-4 NMSA 1978 (being Laws 1882,  
2 Chapter 61, Section 7, as amended) is amended to read:

3           "30-32-4. DAMAGES TO PERSON INJURED.--~~[SEC. 69]~~ If [~~any~~]  
4 a person [~~shall set~~] sets on fire any woods, marshes or  
5 prairies, whether [~~his~~] the person's own or not, so as thereby  
6 to occasion [~~any~~] damage to [~~any other~~] another person, [~~such~~]  
7 the person shall make satisfaction in double damages to the  
8 party injured to be recovered by civil action, unless the  
9 person is conducting a prescribed burn pursuant to the  
10 Prescribed Burning Act."

11           SECTION 10. Section 68-2-28 NMSA 1978 (being Laws 1987,  
12 Chapter 143, Section 6, as amended) is amended to read:

13           "68-2-28. FOREST LAND PROTECTION REVOLVING FUND  
14 CREATED.--

15           A. There is created in the state treasury a  
16 revolving fund to be known as the "forest land protection  
17 revolving fund". The forest land protection revolving fund  
18 shall consist of all receipts as provided by Section 68-2-26  
19 NMSA 1978, fees collected pursuant to the Prescribed Burning  
20 Act, appropriations, gifts, grants, donations and revenue  
21 received by the forestry division of the energy, minerals and  
22 natural resources department from the federal government or  
23 other state agencies and other sources for conducting forest  
24 and watershed management projects. Subject to legislative  
25 appropriation, expenditures may be made from the forest land

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1 protection revolving fund upon vouchers signed by the state  
2 forester and warrants issued by the secretary of finance and  
3 administration:

4 (1) for the administration and enforcement of  
5 the Forest Conservation Act;

6 (2) to administer forest and watershed  
7 management projects, including acquisition of tools and  
8 equipment and expenses incurred by the forestry division in  
9 planning and supervising forest and watershed management  
10 projects; ~~and~~

11 (3) to fund approved projects pursuant to the  
12 Forest and Watershed Restoration Act; and

13 (4) to administer the Prescribed Burning Act.

14 B. Money in the forest land protection revolving  
15 fund shall not revert to the general fund."