

<b>LFC Requester:</b>	Austin Davidson
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## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### **SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 02/15/2025

*Check all that apply:*

**Bill Number:** SB33

Original	<u>      </u>	Correction	<u>      </u>
Amendment	<u>      </u>	Substitute	<u>x</u>

**Sponsor:** Sen. Elizabeth "Liz" Stefanics,  
Rep. Harlan Vincent, Rep.  
Kristina Ortez, Rep. Anita  
Gonzales

**Agency Name and  
Code Number:** 305 – New Mexico  
Department of Justice

**Short  
Title:** WILDFIRE PREPARED  
ACT

**Person Writing  
Analysis:** Ben Lovell

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### **SECTION II: FISCAL IMPACT**

#### **APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$20,000	\$20,000	Recurring “and subsequent fiscal years...”	General Fund

(Parenthesis ( ) indicate expenditure decreases)

#### **REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: § 68-2-34 NMSA 1978  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

### **BILL SUMMARY**

#### Synopsis:

This bill creates a Wildfire Prepared Program funded by newly created a Wildfire Prepared Fund to help political subdivisions prepare infrastructure and communities for wildfires. SB33 accomplishes this by appropriating money into the newly created fund and directing the fire planning task force to establish safety standards and to certify structures as wildfire prepared. This bill additionally repeals, recompiles, and amends § 68-2-34 NMSA 1978 into the newly created Act.

Section 1 names the act, "The Wildfire Prepared Act."

Section 2 defines terms, including those property owners eligible for grants as "New Mexico resident[s] who [own] a residence in New Mexico and [meet] all requirements developed by the task force to be eligible for a wildfire prepared program grant." Section 2(F)

Section 3 recompiles § 68-2-34 NMSA 1978, which creates the "Fire Planning Task Force" and amends the language determining who shall comprise the force. Section 3(A) removes the Governor's ability to appoint a representative of the US Forest Service and adds representatives from the office of the superintendent of insurance, homeland security and emergency management department, an expert appointed by the state forester, and a representative of an insurance trade association appointed by the state forester in consultation with the superintendent of insurance.

Section 3(E)(4) requires the Fire Planning Task Force to develop "wildfire preparedness standards for certification that are consistent with and no less stringent than the most recent standards developed by a nationally recognized wildfire prepared standard-setting organization."

Section 3(E)(5) requires the Fire Planning Task Force to develop grant guidelines and requirements for grants under the Act by June 30 of each year.

Section 4 defines the scope of the program: to make changes to structures and properties, conduct hazardous fuels reduction; provide technical assistance and training; conduct

assessments; provide certifications; and to award grants to qualified entities.

Section 5 establishes the Wildfire Prepared Fund as a non-reverting fund in the State Treasury to be administered by the Energy, Minerals, and Natural Resources Department to provide funding for the wildfire prepared program.

Section 6 appropriates twenty-million dollars from the general fund to the Wildfire Prepared Fund “in fiscal year 2025 and subsequent fiscal years.”

Section 7 repeals the recompiled Laws 2003, Chapter 115, Section 1.

Section 8 is an emergency clause to give the act immediate effect.

## **FISCAL IMPLICATIONS**

N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

## **SIGNIFICANT ISSUES**

Most significantly, SB33 does not invoke any exemption to the anti-donation clause of the New Mexico Constitution, such as the exemption for certain supports for affordable housing. Unless a constitutional exemption applies, Section 14 of Article IX, prohibits the state or any of its political subdivisions from “directly or indirectly lend[ing] or pledg[ing] its credit or mak[ing] any donation to or in aid of any person, association or public or private corporation.”

Accordingly, absent an exemption, the grants contemplated under Section 4(A)(2) to “qualified entities to assist eligible property owners with making the necessary changes to their residences for the sole purpose of making the residences wildfire prepared” could run afoul of the anti-donation clause.

This bill grants additional authority to the preexisting Fire Planning Task force to develop standards for certification consistent with and no less stringent than national standards set by “nationally recognized” wildfire prepared standard-setting organization. Section 3(E)(4). The bill then states the Insurance Institute for Business and Home Safety (“IIBHS”) as an example of such a nationally recognized organization; however, the IIBHS is an industry-led group not affiliated with any governmental programs or oversight. *Id.* The lack of clarity surrounding what constitutes a “nationally recognized” wildfire standard setting organization may require guidance from the courts.

This bill repeals § 68-2-34 NMSA 1978 (Laws 2003, Chapter 115, Section 1 and Laws 2003, Chapter 303, Section 1), which created the “Fire Planning Task Force,” and recompiles it into a section of the newly created Wildfire Prepared Act with amended language. The task force has authority to create standards to be codified in building codes as well as grant money to political subdivisions. The amended language removes the Governor’s ability to appoint a representative of the United States Forest Service while vesting the state forester with the power to appoint multiple new members to the task force. Section 3(A). The bill adds representatives of the Office

of Superintendent of Insurance (“OSI”), Homeland Security and Emergency Management Department, as well as a “member with expertise in wildfire science and structures” appointed by the state forester to the task force. *Id.* In addition to the state and local government representatives, the bill directs the state forester to appoint a representative of a state-based property insurance carrier trade association to the task force after consultation with OSI. *Id.* The addition of insurance industry trade associations to a body that identifies and grants state funds to political subdivisions may create the appearance of impropriety or conflicts of interest.

Section 4 of the bill creates a wildfire prepared program to provide “technical assistance and training, conduct assessments, provide certification and award grants” to political subdivisions. This allows the program to help make changes to structures, remove hazardous fuel, and establish community-based programs to conduct assessments and provide certification. This language makes it unclear whether the community-based programs will be responsible for assessing and certifying structures.

Further, Section 4(B) requires that least 50 percent of the grant money shall go to qualified entities, but there are no qualifications established. The definition of “qualified entity” includes political subdivisions of the state and entities “contracted with for the hardening of structures to be wildfire prepared.” Under this language, it appears that any person contracted to assist private property owners harden structures at their residence would be considered a “qualified entity.”

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

Section 4 of this bill could be amended to incorporate exemptions and avoid a conflict with the anti-donation clause of the New Mexico Constitution. For the purposes of Article IX, Section 14, the New Mexico Supreme Court has defined a “donation” as “a gift, an allocation or appropriation of something of value, without consideration.” *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 50 (citing *Vill. of Deming v. Hosdreg Co.*, 1956-NMSC-111, ¶ 36, 62 N.M. 18). Consider incorporating an anti-donation clause exemption in Section 4; specifying that any grant directly or indirectly benefitting any private person or entity requires adequate consideration in exchange for the grant funds; or restricting the use grant funds for improvements

on private property.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

## **AMENDMENTS**