

CHAPTER 68

Timber

ARTICLE 1

Restrictions and Regulations

68-1-1. [Protection of growing timber; public policy.]

That the protection of growing timber and young growth from fire hazard and the prevention of logging practices which will increase fire hazard and prevent the maintaining of favorable conditions of water flows are hereby declared to be a public policy of the state of New Mexico.

History: Laws 1939, ch. 141, § 1; 1941 Comp., § 64-101; 1953 Comp., § 62-1-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For state fire marshal, see 59A-52-1 NMSA 1978 et seq.

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35A Am. Jur. 2d Fires §§ 1 to 4; 52 Am. Jur. 2d Logs and Timber § 61.

Constitutionality of conservation or reforestation legislation, 13 A.L.R.2d 1095.

Encroachment of trees, shrubbery, or other vegetation across boundary line, 65 A.L.R.4th 603.

98 C.J.S. Woods and Forests §§ 3, 5, 7.

68-1-2. Logging operations; fire prevention; reserving young trees and seed trees; fire lines.

Any person, firm, association or corporation cutting sawtimber species from lands within the state shall:

A. take all reasonable precaution to prevent the starting of fires, and promptly suppress all fires that may be started on timberlands before, during or after cutting;

B. take all reasonable precaution in felling trees on the area being cut and to reserve uncut sufficient trees of seed-bearing size on the land being cut over to insure natural reforestation, as follows:

C. reserve and leave uncut, in operations cutting logs for lumber and timber manufacturing purposes, all trees measuring twelve inches or less in diameter outside bark, at a point four and one-half feet from the ground and in addition, leave not less than two live wind firm seed trees per acre measuring seventeen inches or more in diameter outside bark, at a point four and one-half feet from the ground; provided that in operations removing trees twelve inches or less in diameter outside bark at a point four and one-half feet from the ground, for nonlumber manufacturing purposes, such as railroad ties, mine props, stulls, poles or wood for products manufactured from pulp, or any combination thereof, trees required to produce said items may be cut to a minimum diameter of five inches outside bark at a point four and one-half feet from the ground, but in such cuttings there shall be reserved and left uncut not less than four live, wind firm seed trees per acre measuring seventeen inches or more in diameter outside bark, at a point four and one-half feet from the ground; provided, further, however, that in the event that no live, wind firm trees measuring seventeen inches or more in diameter outside bark at a point four and one-half feet from the ground exist on said area at the time of cutting, then the largest live, wind firm trees available on said area shall be left for seed trees in the number prescribed above for operations cutting logs for lumber and timber manufacturing purposes and for operations removing trees twelve inches or less in diameter for nonlumber manufacturing purposes respectively; provided, however, on spruce-type areas or mixed spruce and fir-type areas, an adequate stand of young growth shall be reserved and left uncut or, if such young growth is not present, there shall be reserved and left uncut not less than five percent of the coniferous trees, a substantial portion of which shall be of seed-bearing size; such trees may be reserved in long corners of creeks, across valleys, along ridges or natural firebreaks or in isolated settings of timber;

D. construct fire lines by piling and burning slash on a strip fifty feet wide on each side of main hauling roads.

History: Laws 1939, ch. 141, § 2; 1941 Comp., § 64-102; 1953 Comp., § 62-1-2; Laws 1961, ch. 221, § 1.

ANNOTATIONS

Cross references. — For penalty for setting fires on state lands, see 19-6-1 NMSA 1978.

Manufacture of pulp from timber grown either on private or state lands comes within proviso of this section. 1947 Op. Att'y Gen. No. 47-5078.

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35A Am. Jur. 2d Fires § 1; 52 Am. Jur. 2d Logs and Timber § 61.

Regulations: right of municipality or other public authority to enforce zoning or fire limit regulations as affected by its previous conduct in permitting or encouraging violation thereof, 119 A.L.R. 1509.

Reforestation: constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

Measurement of standing timber, 72 A.L.R.2d 727.

Liability for spread of fire intentionally set for legitimate purpose, 25 A.L.R.5th 391.

98 C.J.S. Woods and Forests §§ 3, 7.

68-1-2.1. Restriction.

Sections 68-1-1 and 68-1-2 NMSA 1978 (being Laws 1939, Chapter 141, Sections 1 and 2, as amended) shall apply only to logging operations and timber cutting pursuant to contracts or agreements entered into prior to January 1, 1979.

History: Laws 1979, ch. 395, § 12.

68-1-3. Violations; penalties.

Any person, firm, association or corporation violating any of the provisions of Section 68-1-2 NMSA 1978 shall be required by the secretary of natural resources to pay a civil penalty in an amount not to exceed two hundred dollars (\$200). The secretary of natural resources may cause suit to be filed for the collection of this penalty upon the failure of the violator to remit the penalty assessed against him. Each violation shall be a separate offense.

History: 1978 Comp., § 68-1-3, enacted by Laws 1981, ch. 298, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1979, ch. 395, § 11, repealed former 68-1-3 NMSA 1978, relating to violations of timber laws.

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Fires §§ 5, 6.

98 C.J.S. Woods and Forests § 8.

68-1-4. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 395, § 11, repealed 68-1-4 NMSA 1978, relating to the commissioner of public lands.

68-1-5. [Timber subject to mortgage on February 1, 1939; partial exemption from cutting restrictions.]

That it is not the intention of this act [68-1-1, 68-1-2, 68-1-5 NMSA 1978] to abrogate any existing mortgage or encumbrance upon timber, or contract for the sale, cutting or logging of timber, and it is therefore provided that any timber included in and described in a bona fide mortgage, encumbrance or contract entered into prior to February 1, 1939 shall be and the same is hereby exempted and excepted from all of the provisions of Section 2, Subparagraph C [68-1-2C NMSA 1978], of this act for the term and duration of such mortgage or contract; provided that in any event no trees shall be harvested less than ten inches in diameter outside bark, at a point twelve inches above the ground.

History: Laws 1939, ch. 141, § 5; 1941 Comp., § 64-105; 1953 Comp., § 62-1-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52 Am. Jur. 2d Logs and Timber § 7.

Mortgage: right of mortgagor or owner of equity of redemption to cut timber, 57 A.L.R. 451.

68-1-6 to 68-1-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 395, § 11, repealed 68-1-6 to 68-1-9 NMSA 1978, relating to the transportation of logs by floating in streams.

68-1-10. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1979, ch. 395, § 13, recompiled former 68-1-10 NMSA 1978 as present 68-2-22 NMSA 1978.

68-1-11. Wildland firefighters not subject to criminal liability.

Employees or agents of governmental entities who authorize volunteer firefighters not certified according to national wildland firefighting standards to respond to wildland fires shall not be subject to criminal liability solely for allowing those volunteer firefighters to engage in firefighting activities.

History: Laws 2007, ch. 16, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

Cross references. — For the good samaritan law, see 12-12-28 NMSA 1978.

For voluntary fire wardens, see 30-32-1 NMSA 1978.

ARTICLE 2 Forest Conservation

68-2-1. Short title.

Sections 68-2-1 through 68-2-27 NMSA 1978 may be cited as the "Forest Conservation Act".

History: 1953 Comp., § 62-3-1, enacted by Laws 1959, ch. 122, § 1; 1978 Comp., § 68-2-1; 1979, ch. 395, § 2; 2023, ch. 64, § 1.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed the statutory reference from "68-2-25" to "68-2-27".

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

For article, "The United States Forest Service: Changing of the Guard," see 32 Nat. Resources J. 449 (1992).

For comment, "Fact, Fiction, and Forest Service Appeals," see 32 Nat. Resources J. 649 (1992).

For article, "What Can Be Learned from Domestic and International Aspects of Japan's Forest Resource Utilization?," see 32 Nat. Resources J. 855 (1992).

For article, "'Traditions' of Forest Control in Java: Implications for Social Forestry and Sustainability," see 32 Nat. Resources J. 883 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality of forest conservation or reforestation legislation, 13 A.L.R.2d 1095.

68-2-2. Acceptance of federal laws.

The state is authorized to accept the provisions of the act of congress dated June 7, 1924 (43 Stat. 653) commonly known as the Clarke-McNary Act and the act of congress dated July 1, 1978 (92 Stat. 365) commonly known as the Cooperative Forestry Assistance Act of 1978, as amended.

History: 1953 Comp., § 62-3-2, enacted by Laws 1959, ch. 122, § 2; 1978 Comp., § 68-2-2; 2023, ch. 64, § 2.

ANNOTATIONS

Compiler's notes. — The remaining sections of the Clarke-McNary Act appear as 16 U.S.C.S. §§ 499, 505, 515, 568, 569, and 570.

The Cooperative Forest Management Act was repealed by P.L. 95-313, § 13(a)(4), effective July 1, 1978.

The Forest Pest Control Act was repealed by P.L. 95-313, § 13(a)(3), effective July 1, 1978.

The 2023 amendment, effective June 16, 2023, authorized the state of New Mexico to accept the provisions of the Forestry Assistance Act of 1978, and removed a reference to the federal Forest Pest Control Act; added the section heading "Acceptance of federal laws"; after "congress dated", deleted "August 25, 1950" and added "July 1, 1978 (92 Stat. 365)", and after "Cooperative", deleted "Forest Management Act and the act of congress dated June 25, 1947 (61 Stat. 177) commonly known as the Forest Pest Control Act" and added "Forestry Assistance Act of 1978, as amended".

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

68-2-3. State forester; compensation; qualifications.

A. The director of the forestry division of the energy, minerals and natural resources department is the "state forester" and shall be paid a salary, set by the secretary of energy, minerals and natural resources.

B. No individual may be appointed as the state forester unless the individual is, by reason of scientific education and experience, knowledgeable in the principles of forest management.

History: 1953 Comp., § 62-3-3, enacted by Laws 1959, ch. 122, § 3; 1977, ch. 254, § 76; 1978 Comp., § 68-2-3; 1987, ch. 234, § 45; 2023, ch. 64, § 3.

ANNOTATIONS

Cross references. — For establishment of the energy, minerals, and natural resources department, see 9-5A-3 NMSA 1978.

For appointment of director, see 9-5A-6 NMSA 1978.

For transfer of radio communication property to communications division of the general services department, see 15-2-5 NMSA 1978.

The 2023 amendment, effective June 16, 2023, removed references to the repealed forest conservation fund, and removed references to the state forestry division seal; in the section heading, deleted "Seal"; and in Subsection A, after "natural resources", deleted "to be paid from the forest conservation fund. The division shall adopt a seal and such seal affixed to any paper signed by the state forester shall be prima facie evidence of the due execution thereof".

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52 Am. Jur. 2d Logs and Timber § 61.

98 C.J.S. Woods and Forests § 13.

68-2-4. Forestry division office; state forester in charge; executive officer.

The forestry division shall establish an office in the city of Santa Fe, with the state forester in charge as executive officer of the division.

History: 1953 Comp., § 62-3-4, enacted by Laws 1959, ch. 122, § 4; 1977, ch. 254, § 77.

68-2-5. State forester; employment of personnel; state fire chief; office clerk.

The state forester, with the approval of the secretary of energy, minerals and natural resources, shall employ, at salaries in accordance with the Personnel Act [Chapter 10,

Article 9 NMSA 1978], those employees necessary to carry out the responsibilities of the forestry division.

History: 1953 Comp., § 62-3-5, enacted by Laws 1959, ch. 122, § 5; 1977, ch. 254, § 78; 1987, ch. 234, § 46.

68-2-6. Division to serve as contracting agency for state; contracting authority.

For the purposes of the Forest Conservation Act, the forestry division of the energy, minerals and natural resources department is designated as the agent of the state and is authorized to enter into contracts and cooperative agreements with the secretary of agriculture of the United States of America, private landowners, the commissioner of public lands of the state, individuals, corporations or other local, state, federal and private agencies or organizations to carry out the provisions of the Forest Conservation Act and to do all other acts necessary to take advantage of and carry out the provisions of the acts of congress promulgated for the purposes of the Forest Conservation Act and the federal Cooperative Forestry Assistance Act of 1978, as amended.

History: 1953 Comp., § 62-3-6, enacted by Laws 1959, ch. 122, § 6; 1963, ch. 24, § 1; 1977, ch. 254, § 79; 1978 Comp., § 68-2-6; 2023, ch. 64, § 4.

ANNOTATIONS

Cross references. — For acts of congress, see 68-2-2 NMSA 1978 and notes thereto.

The 2023 amendment, effective June 16, 2023, authorized the forestry division of the energy, minerals and natural resources department to enter into contracts and cooperative agreements with the United States secretary of agriculture, private landowners, the commissioner of public lands of the state, individuals, corporations or other local, state, federal and private agencies or organizations to carry out the provisions of the Forest Conservation Act; in the section heading, added "contracting authority"; and added "forestry" preceding "division", after "division", added "of the energy, minerals and natural resources department", after "private agencies or organizations to", deleted "prevent and suppress forest fires, brush fires, grass fires or other wild fires, to do research; establish nurseries; and furnish technical advice to the people of the state" and added "carry out the provisions of the Forest Conservation Act", after "acts of congress", deleted "hereinbefore set out and all other acts of congress which are promulgated for forest conservation or rural fire defense" and added "promulgated for the", and after "purposes", added "of the Forest Conservation Act and the federal Cooperative Forestry Assistance Act of 1978, as amended".

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

68-2-7. Forest fire and suppression defined.

As used in the Forest Conservation Act:

A. "forest fire" means a fire burning uncontrolled on lands covered wholly or in part by timber, brush, grass, grain or other vegetation; and

B. "suppression" means all of the activities to extinguish, limit or contain forest fire spread.

History: 1953 Comp., § 62-3-6.1, enacted by Laws 1967, ch. 208, § 1; 1978 Comp., § 68-2-7; 2023, ch. 64, § 5.

ANNOTATIONS

Cross references. — For state fire marshall, see 59A-52-1 NMSA 1978 et seq.

The 2023 amendment, effective June 16, 2023, defined "suppression" as used in the "Forest Conservation Act; in the section heading, added "and suppression"; in Subsection A, after "or other", deleted "inflammable"; and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35A Am. Jur. 2d Fires §§ 1 to 5.

98 C.J.S. Woods and Forests §§ 3, 5, 7.

68-2-8. Forestry division responsibility for statewide forest fire protection and forest conservation; authority; police power.

A. The forestry division of the energy, minerals and natural resources department is responsible for the conservation of forests and forest resources and the prevention and suppression of forest fires on all nonfederal, nonmunicipal lands in the state. The division, whether independently or in cooperation with federal, state or local agencies, is authorized to:

- (1) conserve forests and forest resources;
- (2) maintain and improve forest health;
- (3) prevent, control and suppress forest fires;
- (4) conduct forest fire suppression rehabilitation and repair;
- (5) conduct post-fire slope stabilization, erosion control, riparian restoration, seeding and reforestation of burned areas;
- (6) research forestry and forest fires;
- (7) prescribe uses of fires;

(8) conduct urban and community forestry;

(9) establish and support nurseries;

(10) furnish forestry and forest fire-related technical advice to the people of the state, including technical advice and projects related to the mitigation of or adaptation to changing climatic conditions; and

(11) provide financial, technical and related assistance to local governments to organize, train and equip local firefighters to prevent, control and suppress forest fires threatening the natural resources of rural forest areas or communities.

B. The forestry division and the division's agents:

(1) shall have unrestricted access to private and state lands, including the use of roads and trails to carry out forest fire suppression work; and

(2) shall not be liable to civil action for trespass or for damages for acts done in the course of their official duties unless otherwise expressly provided by contract or agreement with the landowner, which contract or agreement is made pursuant to the provisions of the Forest Conservation Act.

C. The police power of the state shall extend to such control of private forest lands as is necessary for the suppression of forest fires.

D. The authorization provided in Subsection A of this section with respect to forest conservation, fire prevention and post-fire forest rehabilitation activities, but not forest fire suppression activities, is to be exercised in cooperation and pursuant to an agreement with the underlying landowner or land manager.

History: 1953 Comp., § 62-3-6.2, enacted by Laws 1967, ch. 208, § 2; 1978 Comp., § 68-2-8; 1979, ch. 395, § 3; 2023, ch. 64, § 6.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, authorized the forestry division of the energy, minerals and natural resources department to conduct forest fire prevention, suppression, control, suppression rehabilitation and repair, post-fire slope stabilization, erosion control, riparian restoration, seeding and reforestation of burned areas; in the section heading, deleted "Statewide" and added "Forestry division", and "and forest conservation; authority; police power"; added subsection designation "A." to the former introductory clause; in Subsection A, after "The", deleted "state shall have the responsibility" and added "forestry division of the energy, minerals and natural resources department is responsible", after "for", added "the conservation of forests and forest resources and the", after "nonmunicipal lands in the state", deleted "Activities authorized under this section shall include, but not limited to, cooperation with federal,

state and local agencies in the development of systems and methods for the prevention, control, suppression and prescribed use of fires on rural lands and within rural communities; and providing" and added "The division, whether independently or in cooperation with federal, state or local agencies, is authorized to", added Paragraphs A(1) through A(10), in Paragraph A(11), added "provide", after "assistance to", deleted "others" and added "local governments", after "equip local", deleted "fire-fighting forces" and added "firefighters", and after "rural forest areas", added "or communities"; deleted former Subsection A, which related to the police power of the state extending to the control of forests lands; in Subsection B, after "The", deleted "state forester" and added "forestry division", and redesignated former Subsection C as Paragraph B(2); and deleted former Subsection D and added new Subsections C and D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52 Am. Jur. 2d Logs and Timber § 61.

68-2-9. Penalty for obstruction.

Any person obstructing the access of the forestry division of the energy, minerals and natural resources department or the division's agents to lands, as provided in Section 68-2-8 NMSA 1978, is guilty of a misdemeanor and upon conviction may be sentenced to not less than thirty days nor more than ninety days in the county jail or fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or both such imprisonment and fine.

History: 1953 Comp., § 62-3-6.3, enacted by Laws 1967, ch. 208, § 3; 1978 Comp., § 68-2-9; 2023, ch. 64, § 7.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, after "access of the", deleted "state forester or his" and added "forestry division of the energy, minerals and natural resources department or the division's", and after "agents to lands", deleted "failing to obey any summons to appear and assist in the suppression of a forest fire or refusing to furnish tools and equipment".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35A Am. Jur. 2d Fires §§ 11, 12, 16.

Punitive damages: liability for punitive or exemplary damages or statutory penalty of one intentionally or negligently starting fire which caused an injury to person or property, 104 A.L.R. 412.

Liability of property owner for damages from spread of accidental fire originating on property, 17 A.L.R.5th 547.

98 C.J.S. Woods and Forests § 8.

68-2-10. Administrative districts.

The state forester shall divide the state into [a] suitable and convenient number of administrative districts and shall appoint a supervising forest officer for each district.

History: 1953 Comp., § 62-3-6.3, enacted by Laws 1967, ch. 208, § 4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

68-2-11. Contracts for protection of forest areas.

The commissioner of public lands is authorized to enter into contracts and cooperative agreements with the forestry division of the energy, minerals and natural resources department for the protection and conservation of forests and denuded forest areas under the commissioner's jurisdiction and control and is authorized to pay the assessments thereunder from the state land office maintenance fund, provided that such contracts and agreements do not commit the use of the lands in a manner and do not entail expenditures of the maintenance fund contrary to the provisions of the act of congress dated June 20, 1910, entitled Enabling Act for New Mexico.

History: 1953 Comp., § 62-3-7, enacted by Laws 1959, ch. 122, § 7; 1977, ch. 254, § 80; 1978 Comp., § 68-2-11; 2023, ch. 64, § 8.

ANNOTATIONS

Cross references. — For the Enabling Act, see the New Mexico Territorial Laws and Treaties on *NMOneSource.com*.

The 2023 amendment, effective June 16, 2023, authorized the commissioner of public lands to enter into contracts and cooperative agreements with the forestry division of the energy, minerals and natural resources department for the protection and conservation of forests; and after "agreements with the", added "forestry", and after "division", added "of the energy, minerals and natural resources department".

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

68-2-12. Acquisition and disposition of land by division.

The division is authorized, with the approval of the commissioner of public lands, to acquire land or interest in land, either by gift or by purchase, title to which shall be taken in the name of the state of New Mexico. Land or interest in land no longer needed may be disposed of as provided by law.

History: 1953 Comp., § 62-3-8, enacted by Laws 1959, ch. 122, § 8; 1977, ch. 254, § 81.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Acquisition by adverse possession or use of public property held by municipal corporation or other governmental unit otherwise than for streets, alleys, parks, or common, 55 A.L.R.2d 554.

68-2-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 395, § 11, repealed 68-2-13 NMSA 1978, relating to the purchase of a radar site near Tierra Amarilla.

68-2-14. Enforcement of laws; investigation of violations.

A. The forestry division of the energy, minerals and natural resources department is authorized to enforce all laws and rules relating to all forested, cut-over or brush lands lying within the state under the following circumstances:

- (1) prevention and suppression of forest fires;
- (2) logging and timber operations and practices;
- (3) trespass, waste and littering; and
- (4) conservation of forests and forest resources and products.

B. The state forester, all persons the state forester designates as peace officers and any other peace officers are authorized to go upon forested, cut-over or brush lands lying within the state to investigate violations of the Forest Conservation Act and are given the necessary police powers to apprehend and arrest on warrant issued by any magistrate or judge of the state for violation of the Forest Conservation Act or without warrant for violations thereof committed in their presence and shall not be liable to civil actions in trespass for acts done in discharge of their duties.

History: 1953 Comp., § 62-3-9, enacted by Laws 1959, ch. 122, § 9; 1977, ch. 254, § 83; 1978 Comp., § 68-2-14; 1979, ch. 395, § 4; 2023, ch. 64, § 9.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, authorized the forestry division of the energy, minerals and natural resources department to enforce all laws and rules relating to forested lands under listed circumstances; redesignated former Subsections A

through D as Paragraphs A(1) through A(4), respectively; in Subsection A, after "The", added "forestry", after "division", added "of the energy, minerals and natural resources department", in Paragraph A(1), after "suppression", added "forest", and in Paragraph A(4), after "conservation of", deleted "commercial forest lands" and added "forests and forest resources"; and in Subsection B, after "all persons", deleted "designated by him" and added "the state forester designates as peace officers and any other peace officers", after "upon", deleted "such lands" and added "forested, cut-over or brush lands lying within the state", and after each occurrence of "violations of the", deleted "laws, rules and regulations" and added "Forest Conservation Act".

State power not exclusive. — The provisions of Sections 68-2-16 and 9-5A-4 NMSA 1978 and this section do not give the forestry division exclusive power to enforce and administer laws and regulations relating to timber harvesting and do not expressly prohibit local governments from enacting and enforcing such laws. *Rancho Lobo, Ltd. v. Devargas*, 303 F.3d 1195 (10th Cir. 2002), cert. denied, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003).

In passing the Forest Conservation Act, Section 68-2-1 NMSA 1978 et seq., the legislature left room for concurrent jurisdiction over local forestry issues; thus, the act does not impliedly preempt a county ordinance, dealing, *inter alia*, with economic development, local employment, and hours of operation, by occupying the entire field of regulation relating to timber harvesting in New Mexico. *Rancho Lobo, Ltd. v. Devargas*, 303 F.3d 1195 (10th Cir. 2002), cert. denied, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003).

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52 Am. Jur. 2d Logs and Timber § 61.

98 C.J.S. Woods and Forests § 13.

68-2-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 395, § 11, repealed 68-2-15 NMSA 1978, relating to fire prevention and contracts to suppress fires.

68-2-16. Rules of division.

The forestry division of the energy, minerals and natural resources department is authorized to make and enforce rules not in conflict with any law now in force as it deems necessary for the prevention and suppression of forest fires, for the control of forest insects or diseases and for the application of commercial or silvicultural forest practices within the state. The rulemaking power includes the requiring of registration of

sawmills, declaring of designated areas to be high hazard fire areas and closing them to entry by the general public for reasonable periods and requiring native forest vegetative types to be harvested or treated in such manner as to support forest practices that maintain and enhance the benefits of forests and forest resources to New Mexico. Rules shall be provided to all interested parties upon request. Nothing in the Forest Conservation Act shall prevent a landowner from converting forest vegetative types to nonforest vegetative types for such purposes as range, wildlife habitat, farming, surface mining or subdivision development; provided, however, any slash resulting from such conversion shall be treated in a manner that will minimize the spread of forest fires and the possibility of insect or disease epidemic.

History: 1953 Comp., § 62-3-11, enacted by Laws 1959, ch. 122, § 11; 1961, ch. 113, § 1; 1977, ch. 254, § 85; 1978 Comp., § 68-2-16; 1979, ch. 395, § 5; 2023, ch. 64, § 10.

ANNOTATIONS

Cross references. — For penalty for violation of rules and regulations, see 68-2-17 NMSA 1978.

The 2023 amendment, effective June 16, 2023, authorized the forestry division of the energy, minerals and natural resources department to make and enforce rules it deems necessary for the prevention and suppression of forest fires; in the section heading, deleted "regulations"; and after "The", added "forestry", after "division", added "of the energy, minerals and natural resources department", after "control of forest", deleted "pests" and added "insects or diseases", and after "possibility of insect", added "or disease".

State power not exclusive. — The provisions of Sections 68-2-14 and 9-5A-4 NMSA 1978 and this section do not give the forestry division exclusive power to enforce and administer laws and regulations relating to timber harvesting and do not expressly prohibit local governments from enacting and enforcing such laws. *Rancho Lobo, Ltd. v. Devargas*, 303 F.3d 1195 (10th Cir. 2002), cert. denied, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003).

In passing the Forest Conservation Act, Section 68-2-1 NMSA 1978 et seq., the legislature left room for concurrent jurisdiction over local forestry issues; thus, the act does not impliedly preempt a county ordinance, dealing, *inter alia*, with economic development, local employment, and hours of operation, by occupying the entire field of regulation relating to timber harvesting in New Mexico. *Rancho Lobo, Ltd. v. Devargas*, 303 F.3d 1195 (10th Cir. 2002), cert. denied, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003).

Rules held legitimate exercise of rule-making power. — Rules 5 to 8 of the "Rules and Regulations Relating to the Prevention and Suppression of Forest Fires" are a legitimate exercise of the rule-making power granted to the forest conservation

commission (now forestry division of energy, minerals and natural resources department). 1970 Op. Att'y Gen. No. 70-97 (rendered under prior law).

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52 Am. Jur. 2d Logs and Timber § 61.
98 C.J.S. Woods and Forests §§ 3, 13.

68-2-17. Laws; rules and regulations; violations; penalties.

It is unlawful for any person to violate any provision of the Forest Conservation Act [68-2-1 to 68-2-27 NMSA 1978] or any provision of a rule or regulation adopted pursuant thereto. Such violation is a misdemeanor and upon conviction thereof such person shall be punished for each violation by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one year or both.

History: 1953 Comp., § 62-3-12, enacted by Laws 1959, ch. 122, § 12; 1977, ch. 254, § 86; 1979, ch. 395, § 6; 1980, ch. 84, § 1; 1987, ch. 143, § 1.

ANNOTATIONS

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 98 C.J.S. Woods and Forests § 8.

68-2-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 155, § 1 repealed 68-2-18 NMSA 1978, as amended by Laws 1977, ch. 254, § 87, relating to the emergency fire suppression fund, effective June 20, 1997.

68-2-19. Repealed.

History: 1953 Comp., § 62-3-14, enacted by Laws 1959, ch. 122, § 14; 1977, ch. 254, § 88; 1978 Comp., § 68-2-19 repealed by Laws 2023, ch. 64, § 16.

ANNOTATIONS

Repeals. — Laws 2023, ch. 64, § 16 repealed 68-2-19 NMSA 1978, as enacted by Laws 1959, ch. 122, § 14, relating to fire protection cooperative contract receipts,

special suspense fund, general forest conservation fund, effective June 16, 2023. For provisions of former section, see the 2022 NMSA 1978 on *NMOneSource.com*.

68-2-20. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 395, § 11, repealed 68-2-20 NMSA 1978, relating to the reversion of funds in the forest conservation fund or in the emergency fire suppression fund to the state's general fund.

68-2-21. Revolving fund created.

There is created in the state treasury a revolving fund to be known as the "conservation planting revolving fund". The conservation planting revolving fund shall consist of money appropriated to the fund by the legislature, all receipts from the sale of trees for conservation plantings and any other revenues directed to the fund. Expenditures may be made from the conservation planting revolving fund upon vouchers signed by the state forester and warrants issued by the secretary of finance and administration for the purpose of purchasing, selling or distributing trees to New Mexico landowners, schools, civic or community groups or other organizations for conservation plantings or generally to protect or enhance the state's environment. Money in the conservation planting revolving fund shall not revert to the state general fund.

History: 1978 Comp., § 68-2-21, enacted by Laws 1979, ch. 221, § 2; 1979, ch. 395, § 7; 1990, ch. 96, § 6; 1991, ch. 3, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in the second sentence, inserted "to the fund" near the middle, added "and any other revenues directed to the fund" at the end, and made a related stylistic change.

The 1990 amendment, effective May 16, 1990, in the second sentence, inserted "money appropriated by the legislature and" and substituted "trees" for "tree seedlings to New Mexico landowners" and, in the third sentence, substituted "selling or distributing trees to New Mexico landowners, schools, civic or community groups or other organizations for conservation plantings or generally to protect or enhance the state's environment" for "tree seedlings for sale and distribution to New Mexico landowners for conservation plantings".

Duplicate laws. — Laws 1979, ch. 221, § 2, and Laws 1979, ch. 395, § 7, enacted new sections which were identical except for the second sentence in each. The section was set out as enacted by Laws 1979, ch. 395, § 7. The second sentence in Laws 1979, ch. 221, § 2, read: "The conservation planting revolving fund shall consist of all receipts

from the sale of tree seedlings to New Mexico landowners for conservation plantings and money appropriated by this act." See 12-1-8 NMSA 1978.

68-2-22. Cutting and removing woody material without written consent.

A. As used in this section:

(1) "owner" means any public agency, person, partnership, firm, corporation and recognized agents owning or having legal control to the surface rights of the land upon which the woody material is located and having legal authority to issue permits or enter into agreements for the disposal of the woody material; and

(2) "woody material" includes any live or dead evergreen, coniferous or deciduous tree, branch, bough, bush, sapling or shrub in its natural condition, trimmed or untrimmed, and with or without roots.

B. No person shall cut, remove, transport or sell any woody material without written consent of the owner or proof of ownership, whether the land is publicly or privately owned. The written consent shall contain a legal description of the land where the woody material is removed, the name and address of the legal owner, the volume or amount of material to be removed, the date of execution and the expiration date of the consent. In addition, any person purchasing woody material from another for the purpose of resale must possess a valid bill of sale containing the date of sale, the amount of material purchased and the name, address and signature of the seller. The written consent, bill of sale or a true copy shall be carried by every person in charge of cutting, removing, transporting or selling the woody material and shall be exhibited to any peace officer at the officer's request. This provision shall not apply to campers, picnickers, hunters and persons fishing who gather woody material for use in the immediate vicinity of their campsite or private landowners removing woody material from their own land for their personal use.

History: 1953 Comp., § 62-1-13, enacted by Laws 1961, ch. 200, § 1; 1963, ch. 316, § 1; 1967, ch. 15, § 1; 1977, ch. 254, § 75; 1979, ch. 395, § 1; 1978 Comp., § 68-1-10 NMSA 1978, recompiled as § 68-2-22 by Laws 1979, ch. 395, § 13; 1987, ch. 143, § 2; 2023, ch. 64, § 11.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, defined "owner" and "woody material"; added Subsection A; and in Subsection B, after "shall be exhibited to any", deleted "officer of the law, forestry agent, forest ranger, forest patrolman or conservation" and added "peace".

Language of section is clear and unambiguous. 1969 Op. Att'y Gen. No. 69-121.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52 Am. Jur. 2d Logs and Timber §§ 49, 61.

98 C.J.S. Woods and Forests § 5.

68-2-22.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1996, ch. 74, § 2 repealed 68-2-22.1 NMSA 1978, as enacted by Laws 1987, ch. 143, § 3, relating to a Christmas tree tag fee, effective May 15, 1996. For provisions of former section, see the 1995 NMSA 1978 on *NMOneSource.com*.

68-2-23. Repealed.

History: 1978 Comp., § 68-2-23, enacted by Laws 1979, ch. 395, § 8; repealed by Laws 2023, ch. 64, § 16.

ANNOTATIONS

Repeals. — Laws 2023, ch. 64, § 16 repealed 68-2-23 NMSA 1978, as enacted by Laws 1979, ch. 395, § 8, relating to definitions, effective June 16, 2023. For provisions of former section, see the 2022 NMSA 1978 on *NMOneSource.com*.

68-2-24. Forest land policy.

Recognizing that the forest makes a vital contribution to New Mexico by providing wood products, jobs, grazing, quality water, wildlife habitat, young trees, taxes and other economic benefits, it is hereby declared to be the public policy of the state to adopt forest practices that maintain and enhance such benefits and such resources and to recognize varying forest resources by employing silvicultural planning, including fire prevention that provides for the removal of trees in a manner that provides reasonable assurance for the natural or artificial regeneration of native tree species; provided, however, nothing in this section shall be in conflict with any law now in force.

History: 1978 Comp., § 68-2-24, enacted by Laws 1979, ch. 395, § 9; 2023, ch. 64, § 12.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the public policy of the state as it relates to forest land; and after "regeneration of", deleted "commercial" and added "native".

68-2-25. Forest owner assistance.

Upon the request of any landowner, the state forester shall advise and encourage the use of good management practices through an educational program and by providing technical forestry assistance to any landowner for specific sites prior to and during harvesting or other forestry-related activities.

History: 1978 Comp., § 68-2-25, enacted by Laws 1979, ch. 395, § 10; 2023, ch. 64, § 13.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, after "harvesting", added "or other forestry-related".

Severability. — Laws 1979, ch. 395, § 14, provided for the severability of the act if any part or application thereof was held invalid.

68-2-26. Enforcement; Forest Conservation Act.

Any peace officer enforcing the provisions of the Forest Conservation Act may:

A. stop any vehicle or means of conveyance containing any woody material for the purpose of inspection and investigation;

B. inspect the woody material in any vehicle or other means of conveyance, including common carrier;

C. seize and hold any woody material cut, removed, piled, transported or offered for sale in violation of this section. Upon determination by the appropriate court that a section of the Forest Conservation Act has been violated and the court's issuance of an order authorizing the sale, the forestry division of the energy, minerals and natural resources department shall sell the woody material and all money collected is to be deposited into the forest land protection revolving fund; and

D. seize and hold any property used in violation of this section and, upon determination of the appropriate court that a section of the Forest Conservation Act has been violated, keep or dispose of the property upon order of the district court. All money collected, if any, shall be deposited into the forest land protection revolving fund.

History: 1978 Comp., § 68-2-26, enacted by Laws 1987, ch. 143, § 4; 2023, ch. 64, § 14.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised procedures related to the enforcement of the provisions of the Forest Conservation Act; and in Subsection C, after "has been violated", added "and the court's issuance of an order authorizing the sale",

and after "forestry division", added "of the energy, minerals and natural resources department".

68-2-27. Using false information to comply with the Forest Conservation Act.

It is unlawful for any person to use false information or documentation to obtain any permit, license or other benefit under the Forest Conservation Act [68-2-1 to 68-2-27 NMSA 1978]. Any person who is found guilty of violating the provisions of this section shall be sentenced according to Section 68-2-17 NMSA 1978.

History: 1978 Comp., § 68-2-27, enacted by Laws 1987, ch. 143, § 5.

68-2-28. Forest land protection revolving fund created.

A. There is created in the state treasury a revolving fund to be known as the "forest land protection revolving fund". The forest land protection revolving fund shall consist of all receipts as provided by Section 68-2-26 NMSA 1978, fees collected pursuant to the Prescribed Burning Act [68-5-1 to 68-5-8 NMSA 1978], appropriations, gifts, grants, donations and revenue received by the forestry division of the energy, minerals and natural resources department from the federal government or other state agencies and other sources for conducting forest and watershed management projects. Subject to legislative appropriation, expenditures may be made from the forest land protection revolving fund upon vouchers signed by the state forester and warrants issued by the secretary of finance and administration:

(1) for the administration, implementation and enforcement of the Forest Conservation Act;

(2) to administer and fund forest and watershed management projects, including acquisition of tools and equipment and expenses incurred by the forestry division in planning and supervising forest and watershed management projects;

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

(4) to administer the Prescribed Burning Act.

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

History: 1978 Comp., § 68-2-28, enacted by Laws 1987, ch. 143, § 6; 1996, ch. 74, § 1; 2016, ch. 65, § 1; 2019, ch. 62, § 7; 2021, ch. 13, § 10; 2023, ch. 64, § 15.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised the provisions related to the forest land protection revolving fund to include implementation of the Forest Conservation Act; and in Subsection A, Paragraph A(1), after "administration", added "implementation", and in Paragraph A(2), after "administer", added "and fund".

The 2021 amendment, effective June 18, 2021, provided that fees collected pursuant to the Prescribed Burning Act shall be included in the forest land protection revolving fund, and provided that money in the fund shall be used to administer the Prescribed Burning Act; and in Subsection A, after "Section 68-2-26 NMSA 1978", added "fees collected pursuant to the Prescribed Burning Act", and added Paragraph A(4).

The 2019 amendment, effective June 14, 2019, authorized funds from the forest land protection revolving fund to be used to fund approved projects pursuant to the Forest and Watershed Restoration Act; in Subsection A, after "Section 68-2-26 NMSA 1978", added "appropriations, gifts, grants, donations", added paragraph designations "(1)" and "(2)" and Paragraph A(3); and added new subsection designation "B".

The 2016 amendment, effective May 18, 2016, provided for federal revenue and expenditures from the forest land protection revolving fund for conducting forest and watershed management projects; in the second sentence, after "68-2-26 NMSA 1978", added "and from revenue received by the forestry division of the energy, minerals and natural resources department from the federal government or other state agencies and other sources for conducting forest and watershed management projects. Subject to legislative appropriation, expenditures"; and in the third sentence, after "Forest Conservation Act", added the remainder of the sentence.

The 1996 amendment, effective May 15, 1996, substituted "Section 68-2-26 NMSA 1978" for "Sections 68-2-22.1 and Section 68-2-26 NMSA 1978" in the second sentence.

68-2-29. Short title.

Sections 1 through 5 [68-2-29 to 68-2-33 NMSA 1978] of this act may be cited as the "New Mexico Forest Re-Leaf Act".

History: Laws 1990, ch. 96, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1990 (1st SS), ch. 6, § 8 repealed Laws 1990, ch. 96, § 7 which provided a contingent effective date for Sections 1 to 5 of the act.

68-2-30. Findings and purpose of act.

A. The legislature finds that the health and safety of our increasingly fragile environment is threatened daily by increased emissions of carbon dioxide. These

emissions deplete the stratospheric ozone and cause dangerous greenhouse and global warming effects. Trees naturally synthesize carbon dioxide into oxygen as a byproduct of photosynthesis and thereby reduce the harmful environmental effects caused by carbon dioxide.

B. Trees protect and promote soil, energy and water conservation and generally enhance the state's environment.

C. The purpose of the New Mexico Forest Re-Leaf Act [68-2-29 to 68-2-33 NMSA 1978] is to help protect the environment and to improve the quality of life by encouraging and arranging for the planting of trees throughout the state by children, students, parents, schools, civic and community groups and all residents of New Mexico.

History: Laws 1990, ch. 96, § 2.

ANNOTATIONS

Compiler's notes. — Laws 1990 (1st SS), ch. 6, § 8 repealed Laws 1990, ch. 96, § 7 which provided a contingent effective date for Sections 1 to 5 of the act.

68-2-31. Definition[s].

As used in the New Mexico Forest Re-Leaf Act [68-2-29 to 68-2-33 NMSA 1978]:

A. "division" means the forestry division of the energy, minerals and natural resources department; and

B. "tree" means any living single-stemmed or multi-stemmed woody material.

History: Laws 1990, ch. 96, § 3; 1993, ch. 76, § 1.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted the Subsection designation "A" and added Subsection B.

68-2-32. Tree plantings; promotions and programs; duties of the division and the state forester; authorizing regulations; tree planting program applications.

A. The division shall promote the importance of planting trees for soil, energy and water conservation, to enhance the state's beauty and generally to protect and improve the quality of the environment. The division shall attempt, through the promotion of tree

planting campaigns and other efforts, including public education, to grant or sell trees to individuals and groups to provide for effective planting of trees throughout the state.

B. To promote tree planting, the division shall implement, in harmony, the New Mexico Forest Re-Leaf Act [68-2-29 to 68-2-33 NMSA 1978] and the conservation planting revolving fund provided for in Section 68-2-21 NMSA 1978. The division is authorized to adopt regulations necessary or appropriate to administer and achieve the purposes of the New Mexico Forest Re-Leaf Act and the conservation planting revolving fund.

C. Persons may apply to the division, on forms and in accordance with rules and procedures the division may adopt, for grants or purchases of trees to plant in the state. The division shall encourage applications from schools and universities, environmental education programs and civic and community groups. Each application shall indicate whether any applicable local soil and water conservation district has reviewed and approved the application.

D. Applications to receive and plant trees shall be granted or denied by the division in accordance with criteria the division shall establish. In granting applications, the division shall ensure that no less than twenty percent of the balance of the conservation planting revolving fund shall be granted free to groups or individuals in any fiscal year for the purpose of planting trees.

History: Laws 1990, ch. 96, § 4; 1993, ch. 76, § 2.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "no less than" for "no more than" in the second sentence of Subsection D; added "for the purpose of planting trees" at the end of Subsection D; and deleted former Subsection E, pertaining to a report required to be made by the division to the first session of the fortieth legislature.

68-2-33. Tree planting advisory committee created; purpose of committee; composition.

A. The state forester shall appoint a tree planting advisory committee. The committee shall meet at least twice a year to review the division's tree planting programs. The committee shall seek public input on the division's programs and may recommend to the division and the state forester how best to achieve the purposes of the New Mexico Forest Re-Leaf Act [68-2-29 to 68-2-33 NMSA 1978] and the conservation planting revolving fund.

B. The committee shall include at least one member from the soil and water conservation commission, one member from the state association of soil and water conservation districts, two members from nonprofit environmental organizations dedicated primarily to protecting the environment and two members from the New

Mexico association of nursery industries. Other committee members may include representatives from the state department of public education, state universities, the commission on higher education, the local government division of the department of finance and administration and other persons whom the state forester determines will assist the committee in performing its functions.

C. A majority of the members of the committee constitutes a quorum for the transaction of business. The committee shall elect a chairman from among its membership.

D. Staff for the committee shall be provided by the division.

History: Laws 1990, ch. 96, § 5.

ANNOTATIONS

Compiler's notes. — Laws 1990 (1st SS), ch. 6, § 8 repealed Laws 1990, ch. 96, § 7 which provided a contingent effective date for Sections 1 to 5 of the act.

68-2-34. Fire planning task force; duties.

A. The "fire planning task force" is created. The task force shall consist of twelve members as follows:

- (1) the state fire marshal;
- (2) the director of the local government division of the department of finance and administration;
- (3) a representative of the commissioner of public lands;
- (4) a representative of the federal bureau of land management on behalf of the United States department of the interior, appointed by the governor after consulting with the department of the interior;
- (5) a representative of the United States forest service, appointed by the governor, after consulting with the forest service;
- (6) a member of a local fire department, appointed by the governor;
- (7) a member of a volunteer fire department;
- (8) a representative of the New Mexico association of counties;
- (9) a representative of the New Mexico municipal league;

(10) the director of the construction industries division of the regulation and licensing department;

(11) the state forester; and

(12) a representative of an Indian nation, tribe or pueblo, appointed by the governor.

B. The chair of the task force shall be elected by the task force. The task force shall meet at the call of the chair.

C. The public members of the task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

D. The forestry division of the energy, minerals and natural resources department, with assistance from the department of finance and administration, shall provide staff for the task force.

E. The task force shall:

(1) identify those areas within the state that, because of the interface between forests and urban buildings, are the most vulnerable to danger from forest fires;

(2) develop standards for building codes and ordinances that will reduce the threat of forest fires. In developing the standards, the task force shall:

(a) recognize the distinction between altering existing situations and establishing standards for new construction;

(b) consider the benefits of thinning overgrown forests, conducting controlled burns, clearing spaces around homes and other structures, using noncombustible roofing materials and double-pane windows and taking other fire suppression or prevention measures;

(c) consider the impact of fire mitigation measures on wildlife; and

(d) solicit comments from affected landowners, land users and local governments;

(3) work with communities in the affected areas in adopting and implementing the building codes and ordinances; and

(4) report its progress and any recommendations for legislation to the governor and the legislature by December 15 of each year.

History: Laws 2003, ch. 115, § 1; 2003, ch. 303, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 303 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

Compiler's notes. — Laws 2003, ch. 115, § 1 and Laws 2003, ch. 303, § 1, enacted almost identical new sections, both effective June 20, 2003. Pursuant to 12-1-8 NMSA 1978, Laws 2003, ch. 303, § 1, as the last act signed by the governor, was compiled as 68-2-34 NMSA 1978, and is set out above, and Laws 2003, ch. 115, § 1, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

Laws 2003, ch. 303, § 1 [set out above], effective June 20, 2003, enacted a twelve member fire planning task force. The section was set out as amended by Laws 2003, ch. 303, § 1. See 12-1-8 NMSA 1978.

Laws 2003, ch. 115, § 1 [set out below], effective June 20, 2003, enacted an eleven member fire planning task force, and provided:

"Fire planning task force; duties.

A. The "fire planning task force" is created. The task force shall consist of eleven members as follows:

- (1) the state fire marshal;
- (2) the director of the local government division of the department of finance and administration;
- (3) a representative of the commissioner of public lands;
- (4) a representative of the federal bureau of land management on behalf of the United States department of the interior, appointed by the governor after consulting with the department of the interior;
- (5) a representative of the United States forest service, appointed by the governor, after consulting with the forest service;
- (6) a member of a local fire department, appointed by the governor;
- (7) a representative of the New Mexico association of counties;
- (8) a representative of the New Mexico municipal league;
- (9) the director of the construction industries division of the regulation and licensing department;

(10) the state forester; and

(11) a representative of an Indian nation, tribe or pueblo, appointed by the governor.

B. The chair of the task force shall be elected by the task force. The task force shall meet at the call of the chair.

C. The public members of the task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

D. The forestry division of the energy, minerals and natural resources department, with assistance from the department of finance and administration, shall provide staff for the task force.

E. The task force shall:

(1) identify those areas within the state that, because of the interface between forests and urban buildings, are the most vulnerable to danger from forest fires;

(2) develop standards for building codes and ordinances that will reduce the threat of forest fires. In developing the standards, the task force shall:

(a) recognize the distinction between altering existing situations and establishing standards for new construction;

(b) consider the benefits of thinning overgrown forests, conducting controlled burns, clearing spaces around homes and other structures, using noncombustible roofing materials and double-pane windows and taking other fire suppression or prevention measures;

(c) consider the impact of fire mitigation measures on wildlife; and

(d) solicit comments from affected landowners, land users and local governments;

(3) work with communities in the affected areas in adopting and implementing the building codes and ordinances; and

(4) report its progress and any recommendations for legislation to the governor and the legislature by December 15 of each year."

ARTICLE 3

Interstate Compact for the Prevention and Control of Forest Fires

68-3-1. Interstate Compact for the Prevention and Control of Forest Fires.

The Interstate Compact for the Prevention and Control of Forest Fires is enacted into law, and New Mexico hereby enters into the compact as a member state with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE COMPACT FOR THE PREVENTION AND CONTROL OF FOREST FIRES

ARTICLE I

Purpose

The purpose of this compact is to promote effective prevention and control of forest fires in the great plains region of the United States by the maintenance of adequate forest firefighting services by the member states, and providing for reciprocal aid in fighting forest fires among the compacting states of the region, including South Dakota, North Dakota, Wyoming, Colorado and any adjoining state of a current member state.

ARTICLE II

Operative Date

This compact is operative immediately as to those states ratifying it if any two or more of the member states have ratified it.

ARTICLE III

State Compact Administrator; Forest Fire Plan

(a) In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control may act as compact administrator for that state, consult with like officials of the other member states and implement cooperation between the states in forest fire prevention and control. The compact administrators of the member states may organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

(b) Each member state may formulate and put in effect a forest fire plan for that state.

ARTICLE IV

Aid to Other Member States

If the state forest fire control agency of a member state requests aid from the state forest fire control agency of another state in combating, controlling or preventing forest fires, the state forest fire control agency of that state may render all possible aid to the requesting agency, consonant with the maintenance of protection at home.

ARTICLE V
Claims and Reimbursement

(a) Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving the aid for any loss or damage to, or expense incurred in the operation of, any equipment used in answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of employees and equipment incurred in connection with the request. However, nothing in this compact prevents any assisting member state from assuming the loss, damage, expense or other cost, from loaning the equipment or from donating the services to the receiving member state without charge or cost.

(b) Each member state shall assure that workers compensation benefits in conformity with the minimum legal requirements of the state are available to all employees and contract firefighters sent to a requesting state pursuant to this compact.

(c) For the purposes of this compact, the term "employee" includes any volunteer or auxiliary legally included within the forest firefighting forces of the aiding state under the laws of the aiding state.

(d) The compact administrators may formulate procedures for claims and reimbursement under the provisions of this article in accordance with the laws of the member state.

ARTICLE VI
Effect of Compact on Existing Statutes; Duties

(a) Ratification of this compact does not affect any existing statute so as to authorize or permit curtailment or diminution of the forest firefighting forces, equipment, services or facilities of any member state.

(b) Nothing in this compact authorizes or permits any member state to curtail or diminish its firefighting forces, equipment, services or facilities. Each member state shall maintain adequate forest firefighting forces and equipment to meet the demands for forest fire protection within its borders in the same manner and to the same extent as if the compact were not operative.

(c) Nothing in this compact limits or restricts the powers of any state ratifying the compact to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in the prevention, control and extinguishment of forest fires in the state.

(d) Nothing in this compact affects any existing or future cooperative relationship or arrangement between the United States forest service and a member state or states.

ARTICLE VII
Representatives of the United States Forest Service

Representatives of the United States forest service may attend meetings of the compact administrators.

ARTICLE VIII
Operation of Articles IV and V

The provisions of Articles IV and V of this compact that relate to reciprocal aid in combating, controlling or preventing forest fires are operative as between any state party to this compact and any other state which is party to this compact in another region if the legislature of the other state has given its assent to the mutual aid provisions of this compact.

ARTICLE IX
Withdrawal from Compact

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of the state takes action to withdraw from the compact. Such action is not effective until six months after notice of the withdrawal has been sent by the chief executive of the state desiring to withdraw to the chief executive of all states then party to the compact.

History: Laws 2016, ch. 66, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2016, ch. 66, § 2, contained an emergency clause and was approved March 8, 2016.

ARTICLE 4

Forest and Watershed Restoration

68-4-1. Short title.

Sections 1 through 6 [68-4-1 to 68-4-6 NMSA 1978] of this act may be cited as the "Forest and Watershed Restoration Act".

History: Laws 2019, ch. 62, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

68-4-2. Definitions.

As used in the Forest and Watershed Restoration Act:

A. "board" means the forest and watershed advisory board;

B. "division" means the forestry division of the energy, minerals and natural resources department;

C. "project" means a large-scale forest and watershed restoration project on any lands in the state that increases the adaptability and resilience to recurring drought and extreme weather events of the state's forests and watersheds; protects water sources; reduces the risk of wildfire, including plans for watershed conservation; restores burned areas or thins forests; and includes a related economic or workforce development project or a wildlife conservation or habitat improvement project; and

D. "sponsor" means a federal, state or local government agency, tribal entity, corporation or organization that applies for a project or is conducting a project in conjunction with the division.

History: Laws 2019, ch. 62, § 2.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

68-4-3. Forest and watershed advisory board created; membership; appointments; terms; compensation.

A. The "forest and watershed advisory board" is created and is administratively attached to the energy, minerals and natural resources department. The board consists of the following members:

- (1) the New Mexico state forester;
- (2) the state engineer or the state engineer's designee;
- (3) the commissioner of public lands or the commissioner's designee;
- (4) the secretary of economic development or the secretary's designee;

- (5) the secretary of environment or the secretary's designee;
- (6) the director of the department of game and fish or the director's designee;
- (7) the state fire marshal or the fire marshal's designee; and
- (8) three public members appointed by the governor from a list of nominees submitted to the governor jointly by the president pro tempore of the senate and the speaker of the house of representatives:
 - (a) one of whom shall be a representative of the forest products industry;
 - (b) one of whom shall be a representative of local government interests, such as a member of New Mexico counties or the soil and water conservation commission; and
 - (c) one of whom shall be a representative of an academic or nonprofit conservation organization with a focus on ecological restoration science.

B. Public members of the board shall serve until their successors have been appointed.

C. A majority of the members of the board constitutes a quorum for transaction of business. The board shall elect a chair from among its members.

D. Members of the board are entitled to receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 2019, ch. 62, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

68-4-4. Board; division; powers and duties.

A. The board shall:

- (1) recommend guidelines, protocols and best management practices for projects;
- (2) foster partnerships and cooperation among federal, state and county agencies, tribal entities, political subdivisions of the state, soil and water conservation

districts, the forest products industry and other public or private organizations dedicated to forest and watershed conservation and restoration programs or projects or wildlife conservation or habitat improvement programs or projects for the purpose of co-funding or leveraging funding for priority projects; and

- (3) evaluate and recommend projects to the division for funding.

B. The division may:

- (1) seek and accept all public and private funds and gifts, devises, grants and donations from others to carry out the provisions of the Forest and Watershed Restoration Act;

- (2) beginning July 1, 2019, provide partial or full funding for approved projects and facilitate and coordinate funding from multiple sources for projects, when appropriate; and

- (3) adopt rules to carry out the purposes of the Forest and Watershed Restoration Act.

History: Laws 2019, ch. 62, § 4.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

68-4-5. Use of forest and watershed restoration fund; project evaluation and prioritization.

A. Money in the forest land protection revolving fund may be used to administer and carry out the purposes of the Forest and Watershed Restoration Act and to fund projects authorized by the division on any lands in the state for:

- (1) on-the-ground restoration treatments;
- (2) project planning;
- (3) economic development programs to advance the use of small-diameter trees and wood biomass removed for hazardous fuel reduction and forest and watershed restoration; or
- (4) workforce development for wood utilization projects.

B. A project is eligible for funding if the project is for a public benefit and:

(1) is part of a current state forest and watershed health plan or forest action plan, a community wildfire protection plan, other comprehensive forest and watershed treatment plan or wildlife conservation or habitat improvement plan approved by the board;

(2) incorporates actions recommended by current plans or, where new plans are developed, seeks to integrate forest, fire and water management with community and economic development plans;

(3) protects watersheds that are the source of drinking or irrigation water;

(4) targets an area at high risk of catastrophic wildfire; or

(5) has obtained all requisite state and federal permits and authorizations necessary to initiate the project, if the project is other than a planning project.

C. A project that is eligible for funding in accordance with Subsection B of this section shall be given priority for funding by the division if the project:

(1) leverages federal, state, local, tribal or private sources and, if available, support from other public or private water, forest, fire, wildlife habitat or economic development programs;

(2) is in an area:

(a) with a wood supply that can be used as biomass for energy production;

(b) where small-diameter trees may be put to commercial use; or

(c) where traditional forest products may be produced;

(3) is clustered around priority areas that are able to supply a useful amount of wood products for industry; or

(4) creates incentives to increase investment by federal, state, local, tribal or private entities, including investment by downstream water users to manage forested headwaters and water sources.

D. Beginning July 1, 2019, sponsors may apply to the division for project funding.

History: Laws 2019, ch. 62, § 5.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

68-4-6. Report by division.

At least forty-five days prior to each legislative session, the division shall submit a report concerning its activities, the projects implemented and any recommended legislation to the governor and the legislature.

History: Laws 2019, ch. 62, § 6.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 5

Prescribed Burning

68-5-1. Short title.

Sections 1 through 8 [68-5-1 to 68-5-8 NMSA 1978] of this act may be cited as the "Prescribed Burning Act".

History: Laws 2021, ch. 13, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

68-5-2. Definitions.

As used in the Prescribed Burning Act:

A. "certified prescribed burn manager" means a person certified pursuant to the prescribed burn manager certification program;

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

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

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

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

F. "prescribed burn" means the controlled application of fire to existing vegetative fuels through pile burning or the burning of vegetation over predefined areas under appropriate weather and environmental conditions for purposes of community protection, watershed resilience, silviculture, wildland fire hazard reduction, fuels reduction, rangeland improvement, wildlife management, habitat improvement, invasive species management and ecological maintenance or restoration, but does not include agricultural burning to clear fields of stubble or slash or to manage invasive species impacting crop production, as part of orchard management or to clear irrigation ditches of vegetation and debris in order to improve or restore efficient water flow and delivery.

History: Laws 2021, ch. 13, § 2.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

68-5-3. Prescribed burn use.

A. Prescribed burning is considered in the public interest and not a public or private nuisance.

B. Except as limited in Subsection C of this section, a private landowner or a private landowner's agent, contractor or legally authorized designee shall have a right to conduct a prescribed burn on the landowner's property, except when the state forester or a county or municipality issues restrictions prohibiting a prescribed burn because of drought or wind conditions; provided that the prescribed burn is conducted with appropriate precautionary measures, including: the use of sufficient personnel and equipment; the prior notification of local fire officials; burn and contingency planning; and the use of appropriate prescribed burn techniques that cause the fire to be confined to a predetermined area.

C. A prescribed burn shall not be started when the national weather service has issued a red flag warning for the area where the prescribed burn is planned to take place.

History: Laws 2021, ch. 13, § 3; 2023, ch. 88, § 1.

ANNOTATIONS

The 2023 amendment, effective April 4, 2023, prohibited the use of prescribed burning during a red flag warning; in Subsection B, added "Except as limited in Subsection C of this section", and after "drought", added "or wind"; and added Subsection C.

68-5-4. Civil liability.

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

B. A private landowner or a private landowner's agent, contractor or legally authorized designee who is not a certified prescribed burn manager and who conducts a prescribed burn is liable for double damages to property or for personal injury caused by the prescribed burn, including the reignition of a previously contained prescribed burn, if that private landowner or that private landowner's agent, contractor or legally authorized designee was negligent in starting, controlling or extinguishing the prescribed burn.

History: Laws 2021, ch. 13, § 4.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

68-5-5. Model prescribed burn permits.

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

A. common terminology and definitions;

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

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

D. procedures to coordinate with the requirements of the department of environment's smoke management program;

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

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

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

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

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

History: Laws 2021, ch. 13, § 5.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

68-5-6. Criteria for counties or municipalities issuing prescribed burn permits.

A county or municipality may adopt an ordinance to require a private landowner to obtain a permit to conduct a prescribed burn. A county or municipality that requires landowners to obtain a permit to conduct a prescribed burn shall use the model prescribed burn permit adopted by the department.

History: Laws 2021, ch. 13, § 6.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

68-5-7. Prescribed burn manager certification.

A. The division shall create a prescribed burn manager certification program accessible to private landowners and private landowners' agents, contractors or legally authorized designees who conduct prescribed burns. The certification program shall include training, which shall be provided by the extension service, on all relevant aspects of prescribed burn, including legal requirements, safety, weather, fire behavior,

smoke management, prescribed burn techniques, public relations, planning and contingencies.

B. The department shall adopt rules to create the prescribed burn manager certification program, including the training and certification of certified prescribed burn managers; training components and engagement of subject matter experts; application processes; qualification for and terms and durations of certification; types of certification, if applicable; oversight of the program; grounds and processes for renewal, suspension and revocation of certifications; and application, certification and renewal fees.

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

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

History: Laws 2021, ch. 13, § 7.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

68-5-8. Prescribed burn training.

The extension service shall provide the training required for prescribed burn manager certification as specified in rules adopted by the department. The extension service may collect fees for providing the training. The fees shall not exceed the amount required to recover costs that the extension service incurs in providing the training.

History: Laws 2021, ch. 13, § 8.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.