

# 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. 1947-48 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 68-2-25 NMSA 1978 may be cited as the "Forest Conservation Act".

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

### **ANNOTATIONS**

**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 of New Mexico 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 August 25, 1950, commonly known as the Cooperative Forest Management Act and the act of congress dated June 25, 1947 (61 Stat. 177), commonly known as the Forest Pest Control Act.

**History:** 1953 Comp., § 62-3-2, enacted by Laws 1959, ch. 122, § 2.

### **ANNOTATIONS**

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

**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.

**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; seal; 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, 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.

B. No individual may be appointed as the state forester unless he 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; 1987, ch. 234, § 45.

### **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.

**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.**

For the purposes of the Forest Conservation Act [68-2-1 through 68-2-25 NMSA 1978], the division 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 state, federal and private agencies or organizations to 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 to do all other acts necessary to take advantage of, and carry out the provisions of the

acts of congress hereinbefore set out, and all other acts of congress which are promulgated for forest conservation or rural fire defense purposes.

**History:** 1953 Comp., § 62-3-6, enacted by Laws 1959, ch. 122, § 6; 1963, ch. 24, § 1; 1977, ch. 254, § 79.

### **ANNOTATIONS**

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

**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 defined.**

As used in the Forest Conservation Act [68-2-1 through 68-2-25 NMSA 1978], "forest fire" means a fire burning uncontrolled on lands covered wholly or in part by timber, brush, grass, grain or other inflammable vegetation.

**History:** 1953 Comp., § 62-3-6.1, enacted by Laws 1967, ch. 208, § 1.

### **ANNOTATIONS**

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

**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. Statewide responsibility for forest fire protection.**

The state shall have the responsibility for prevention and suppression of forest fires on all nonfederal, nonmunicipal lands in the state. Activities authorized under this section shall include, but not be 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 financial, technical and related assistance to others to organize, train and equip local fire-fighting forces to prevent, control and suppress fires threatening the natural resources of rural forest areas. For such purposes:

A. the police power of the state shall extend to such control of private forest lands as shall be necessary for the prevention and suppression of forest fires;

B. the state forester and his agents shall have unrestricted access to private and state lands, including the use of roads and trails, in order to carry out forest fire prevention and suppression work;



C. the state forester and his agents 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 [68-2-1 through 68-2-25 NMSA 1978]; and

D. the state forester and his agents may, in the event of a forest fire, summon and deputize any able-bodied man to assist in suppressing the forest fire and may request tools and equipment under the control of or owned by the landowner or timber operator upon whose lands the forest fire is burning or whose lands are threatened by the forest fire.

**History:** 1953 Comp., § 62-3-6.2, enacted by Laws 1967, ch. 208, § 2; 1979, ch. 395, § 3.

### **ANNOTATIONS**

**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 state forester or his agents to lands, failing to obey any summons to appear and assist in the suppression of a forest fire or refusing to furnish tools and equipment, 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 or more than ninety days in the county jail, or fined not less than one hundred dollars (\$100) or 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.

### **ANNOTATIONS**

**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 division for the protection and conservation of forest and denuded forest areas under his 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.

#### **ANNOTATIONS**

**Cross references.** — For the Enabling Act for New Mexico (36 Stat. 557, ch. 310), see Pamphlet 3, Volume 1 NMSA 1978.

**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.

The division is authorized to enforce all laws, rules and regulations relating to all forested, cutover or brushlands lying within the state under the following circumstances:

- A. prevention and suppression of fires;
- B. logging and timber operations and practices;
- C. trespass, waste and littering; and
- D. conservation of commercial forest lands and products.

In addition, the state forester and all persons designated by him are authorized to go upon such lands to make investigations concerning violations of the laws, rules and regulations and are given the necessary police powers to apprehend and arrest on warrant issued by any magistrate of the state for violation of the laws, rules and regulations, 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; 1979, ch. 395, § 4.

### ANNOTATIONS

**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 and regulations of division.**

The division is authorized to make and enforce rules and regulations not in conflict with any law now in force as it deems necessary for the prevention and suppression of forest or brush fires, and for the control of forest pests and for the application of commercial forest practices within the state. The rule-making power includes but is not limited to 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 commercial forest vegetative types to be harvested in such manner as to support forest practices that maintain and enhance the economic benefits of forests and forest resources to New Mexico. Rules and regulations shall be provided to all interested parties upon request. Nothing in the Forest Conservation Act [68-2-1 through 68-2-25 NMSA 1978] shall prevent a landowner hereafter 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 epidemic.

**History:** 1953 Comp., § 62-3-11, enacted by Laws 1959, ch. 122, § 11; 1961, ch. 113, § 1; 1977, ch. 254, § 85; 1979, ch. 395, § 5.

### **ANNOTATIONS**

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

**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 through 68-2-25 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. Fire protection cooperative contract receipts; special suspense fund; general forest conservation fund.**

Any moneys received by the division from private, state or forest-owner fire protection cooperators prior to July 1 of any year, which moneys are to be applied to cooperative contracts which are to be effective on or after that date, shall not revert to the general fund but shall be placed in a special suspense fund with the state treasurer and immediately after that date the money shall be transferred to the general forest conservation funds [fund].

**History:** 1953 Comp., § 62-3-14, enacted by Laws 1959, ch. 122, § 14; 1977, ch. 254, § 88.

### **ANNOTATIONS**

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

**Severability.** — Laws 1959, ch. 122, § 17, provided for the severability of the act if any part or application thereof was held invalid.

## **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.**

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 officer of the law, forestry agent, forest ranger, forest patrolman or conservation officer at his request at any time. This provision shall not apply to campers, picnickers, hunters and fishermen 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 by Laws 1979, ch. 395, § 13; 1987, ch. 143, § 2.

## ANNOTATIONS

**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. Definitions.**

As used in Section 68-2-22 NMSA 1978:

A. "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. "owner" means any public agency, state or federal, person, partnership, firm, corporation and recognized agents thereof 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 thereof;

C. "commercial forest" means forest land which is producing or capable of producing crops of industrial wood. This includes areas suitable for management to grow crops of industrial wood of a site quality capable of producing in excess of twenty cubic feet per acre of annual growth; and

D. "prevention" involves the manpower, equipment and training and the public programs designed to reduce the potential of accidental or malicious fire starts.

**History:** 1978 Comp., § 68-2-23, enacted by Laws 1979, ch. 395, § 8.

### **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 which provides for the removal of trees in a manner that provides reasonable



assurance for the natural or artificial regeneration of commercial trees 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.

### **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 activities.

**History:** 1978 Comp., § 68-2-25, enacted by Laws 1979, ch. 395, § 10.

### **ANNOTATIONS**

**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 officer of the law, forestry agent, forest ranger, forest patrolman or conservation officer enforcing the provisions of the Forest Conservation Act [68-2-1 through 68-2-25 NMSA 1978] may:

- A. stop any vehicle or means of conveyance containing any woody material for the purpose of making an inspection and investigation;
- B. inspect the woody material in any vehicle or other means of conveyance, including common carrier; and
- 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, the forestry division 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.

### **ANNOTATIONS**

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

### **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 through 68-2-25 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.**

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. 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 for the administration and enforcement of the Forest Conservation Act [68-2-1 through 68-2-25 NMSA 1978]. 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.

#### **ANNOTATIONS**

**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 through 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 through 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 through 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 through 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 through 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 through 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."