

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.

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 §§ 2 to 4; 52 Am. Jur. 2d Logs and Timber § 64.

Constitutionality of conservation or reforestation legislation, 13 A.L.R.2d 1095; 76 A.L.R.2d 1087.

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.

Cross-references. - As to 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. 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. - 35 Am. Jur. 2d Fires § 2; 52 Am. Jur. 2d Logs and Timber § 64.

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.
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.

Effective dates. - Laws 1981, ch. 298, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23. For present provision, see present 68-1-3 NMSA 1978.

Repeals. - Laws 1979, ch. 395, § 11, repeals 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.
Liability for spread of fire purposely and lawfully kindled, 24 A.L.R.2d 241.
98 C.J.S. Woods and Forests § 8.

§ 68-1-4. Repealed.

Repeals. - Laws 1979, ch. 395, § 11, repeals 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 52 Am. Jur. 2d Logs and Timber § 9. 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.

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

§ 68-1-10. Recompiled.

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

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. - 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.

Clarke-McNary Act. - The Clarke-McNary Act appears as 16 U.S.C. §§ 505 and 515.

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 - The Cooperative Forest Management Act was repealed by P.L. 95-313, § 13(a)(4), effective July 1, 1978.

Forest Pest Control Act. - 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.

Cross-references. - As to establishment of the energy, minerals, and natural resources department, see 9-5A-3 NMSA 1978. As to appointment of director, see 9-5A-6 NMSA

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

The 1987 amendment, effective July 1, 1987, designated the former provisions of the section as the present Subsection A; in Subsection A, substituted "energy, minerals and natural resources" for "natural resources" both places it appears in the first sentence and deleted the former third sentence which read "The attorney general shall be attorney for the division"; and added Subsection B.

Appropriations. - Laws 1977, ch. 91, § 2, appropriates \$125,000 from the general fund to the department of state forestry (now forestry division of natural resources department) to purchase a twin-engine airplane in the sixty-fifth and sixty-sixth fiscal years and provides that the single-engine plane owned by the department (now division) is to be sold, with the proceeds credited to the general fund, and that any unexpended or unencumbered balance shall revert to the general fund.

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 § 64. 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, 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.

The 1987 amendment, effective July 1, 1987, substituted "energy, minerals and natural resources" for "natural resources" near the beginning and substituted "those employees

necessary to carry out the responsibilities of the forestry division" for "a state fire chief, an office clerk and additional employees" at the end and made a minor language change.

Personnel Act. - The Personnel Act, referred to in this section, is Laws 1961, ch. 240, presently compiled as 10-9-1 to 10-9-4, 10-9-8 to 10-9-10, 10-9-12, 10-9-13, 10-9-15 to 10-9-17 and 10-9-20 to 10-9-25 NMSA 1978.

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

For the purposes of the Forest Conservation Act [68-2-1 to 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.

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 to 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 35 Am. Jur. 2d Fires §§ 2 to 4. 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 to 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 52 Am. Jur. 2d Logs and Timber § 64.

§ 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.

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

Liability of one on whose property accidental fire originates for damages from spread

thereof, 42 A.L.R. 783; 111 A.L.R. 1140; 18 A.L.R.2d 1081.

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 for spread of fire intentionally kindled on one's premises for a legitimate purpose, 24 A.L.R.2d 241.

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.

§ 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.

Enabling Act. - The Enabling Act for New Mexico (36 Stat. 557, ch. 310) appears in Pamphlet 3 of this compilation.

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Adverse possession of public forest lands, 55 A.L.R.2d 575, 595, 611.

§ 68-2-13. Repealed.

Repeals. - Laws 1979, ch. 395, § 11, repeals 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 of 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.

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 § 64. 98 C.J.S. Woods and Forests § 13.

§ 68-2-15. Repealed.

Repeals. - Laws 1979, ch. 395, § 11, repeals 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 to 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.

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

Effective dates. - Laws 1979, ch. 395, contains no effective date provision, but was enacted at the session which adjourned on March 17, 1979. See N.M. Const., art. IV, § 23.

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 natural resources department). 1970 Op. Att'y Gen. No. 70-97.

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 § 64. 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.

The 1980 amendment added "Laws" at the beginning of and inserted "violations" near the end of the catchline and substituted the portion of the section preceding "shall be punished" for "Any person convicted of violation of any such rules and regulations shall be guilty of a misdemeanor and."

The 1987 amendment, effective June 19, 1987, substituted all of the material following "therefor such person shall be" for the material set out in the main pamphlet.

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. Emergency fire suppression fund; appropriation.

A. In addition to the housekeeping and to the regular fire suppression fund appropriations made in the general appropriations act for the forestry division, the sum of fifty thousand dollars (\$50,000) for each and every fiscal year hereafter is appropriated to be used as an emergency fire suppression fund; provided that this appropriation shall be made only as needed each fiscal year and disbursements therefrom shall be made only after all of the following conditions are met:

- (1) an emergency has been declared to exist by the governor;
- (2) funds are not available in the forestry division's regular fire suppression fund; and
- (3) total disbursements in any one fiscal year from the emergency fire suppression fund shall not exceed fifty thousand dollars (\$50,000) and any funds remaining unexpended at the end of each and every fiscal year shall revert to the general fund.

B. This appropriation shall be met from any available moneys in the hands of the state treasurer which shall, as soon as practicable, be replaced from money acquired as provided by Article 9, Section 7 of the constitution of New Mexico, which loan, in turn, would be repaid by general appropriation at the next session of the legislature.

History: 1953 Comp., § 62-3-13, enacted by Laws 1967, ch. 208, § 5; 1977, ch. 254, § 87.

Repeals and reenactments. - Laws 1967, ch. 208, § 5, repealed former 62-3-13, 1953 Comp., relating to an emergency fund suppression fund, and enacted a new 62-3-13, 1953 Comp.

Emergency clauses. - Laws 1967, ch. 208, § 7, makes the act effective immediately. Approved March 31, 1967.

Severability clauses. - Laws 1967, ch. 208, § 6, provides the the severability of the act if any part or application thereof is held invalid.

§ 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.

Emergency clauses. - Laws 1959, ch. 122, § 18, makes the act effective immediately. Approved March 30, 1959.

Severability clauses. - Laws 1959, ch. 122, § 17, provides for the severability of the act if any part or application thereof is held invalid.

§ 68-2-20. Repealed.

Repeals. - Laws 1979, ch. 395, § 11, repeals 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 all receipts from the sale of tree seedlings to New Mexico landowners for conservation plantings. 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 tree seedlings for sale and distribution to New Mexico landowners for conservation plantings. 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.

Appropriations. - Laws 1979, ch. 221, § 1, appropriates \$36,000 from the state general fund to the conservation planting revolving fund for purchasing and distributing tree seedlings to New Mexico landowners for conservation plantings.

Compiler's notes. - 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 is set out above 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.

The 1987 amendment, effective June 19, 1987, substituted the present first sentence for the first sentence in the section; in the second sentence substituted "removed" for "cut" following "for the wooded material is" and added all of the material following "the

volume or amount of material to be removed"; inserted the present third sentence; in the fourth sentence inserted "bill of sale" following "the written consent" at the beginning and inserted "transporting or selling" preceding "the wooded material"; added the present fifth sentence; and deleted the former Subsection A designation and former Subsections B through D.

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 §§ 55, 64. 98 C.J.S. Woods and Forests § 5.

§ 68-2-22.1. Christmas tree tag fee; applicability; cost; deposit into forest land protection revolving fund.

A. Each tree cut or removed from public or private land in New Mexico and being transported for the purpose of sale or any other tree being offered for sale for the purpose of Christmas decoration shall bear a nontransferable tag purchased from the forestry division of the natural resources department. The tag shall be attached to the tree before the tree is transported by any means within the state and shall not be removed except by the ultimate consumer or user.

B. The forestry division shall charge a fee for each tag sold, the fee to be established by regulation, but not to exceed fifty cents (\$.50) per tag.

C. Christmas tree tags shall be valid only for the calendar year in which they are issued.

D. This section shall not apply to any live balled or burlapped, potted or containerized tree sold or offered for sale by a nursery regulated by the New Mexico department of agriculture under the provisions of the Plant Protection Act, Chapter 76, Article 5, Sections 11 through 28 NMSA 1978.

E. Nothing in this law requires a person to purchase a division Christmas tree tag when the tree is cut and removed under permit from the land of another for personal use.

F. All receipts from the sale of Christmas tree tags shall be placed into the forest land protection revolving fund.

G. Violations of this section constitute a misdemeanor as provided for in Section 68-2-17 NMSA 1978.

History: 1978 Comp., § 68-2-22.1, enacted by Laws 1987, ch. 143, § 3.

Effective dates. - Laws 1987, ch. 143 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

All out-of-state Christmas trees to bear tags until removed by user. - All out-of-state trees being transported for sale, or being offered for sale, in the state of New Mexico for the purpose of Christmas decorations must bear tags from the time of entry into the state until removed by the ultimate consumer or user. 1969 Op. Att'y Gen. No. 69-121.

Provisions may be enforced as to Indians, or purchasers from them, off reservation. - Since the regulation pursuant to this section of the sale of Christmas trees is to be applied to transactions off of the reservation and does not affect tribal relations, it may be enforced as to Indians, or purchasers from them, who are off of the reservation. 1964 Op. Att'y Gen. No. 64-151.

Individual who cuts trees from own privately-owned land and sells same in own store must comply with this section. 1963-64 Op. Att'y Gen. No. 63-162.

§ 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.

Severability clauses. - Laws 1979, ch. 395, § 14, provides for the severability of the act if any part or application thereof is 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.

Effective dates. - Laws 1987, ch. 143 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

§ 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.

Effective dates. - Laws 1987, ch. 143 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

§ 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 Sections 68-2-22.1 and 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.

Effective dates. - Laws 1987, ch. 143 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.