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HOUSE BILL 57

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

INTRODUCED BY

Matthew McQueen

AN ACT

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

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

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

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

A. "certified prescribed burn manager" means a

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

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

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

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

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

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

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

25 A. Prescribed burning is considered in the public

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1 interest and not a public or private nuisance.

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

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

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

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

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

4 SECTION 5. [NEW MATERIAL] MODEL PRESCRIBED BURN

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

9 A. common terminology and definitions;

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

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

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

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

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

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

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1 burn;

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

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

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

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

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

25 B. The department shall adopt rules to create the

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (4) to administer the Prescribed Burning Act.

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

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