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SENATE BILL 94

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Lee S. Cotter

AN ACT

RELATING TO PUBLIC SAFETY; AMENDING THE FIREWORKS LICENSING AND SAFETY ACT TO ADD FIREWORKS THAT MAY BE BANNED; DECLARING AN EMERGENCY.

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

SECTION 1. Section 60-2C-8.1 NMSA 1978 (being Laws 1997, Chapter 17, Section 9, as amended) is amended to read:

"60-2C-8.1. EXTREME OR SEVERE DROUGHT CONDITIONS--  
RESTRICTED SALE AND USE.--

A. The governing body of a municipality may hold a hearing to determine if fireworks restrictions should be imposed within the boundaries of the incorporated municipality affected by exceptional, extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the [~~national weather service~~]

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1 United States drought monitor and any other relevant  
2 information supplied by the [~~United States forest service~~]  
3 southwest coordination center.

4 B. Pursuant to any hearing under Subsection A of  
5 this section, the governing body of a municipality shall issue  
6 a proclamation declaring exceptional, extreme or severe drought  
7 conditions within the boundaries of the incorporated  
8 municipality if the governing body determines such conditions  
9 exist. The governing body's proclamation shall:

10 (1) [~~shall~~] ban the sale and use of  
11 [~~missile-type rockets, helicopters, aerial spinners, stick-type~~  
12 ~~rockets~~] aerial devices and ground-audible devices within the  
13 affected drought area; and

14 (2) [~~shall~~] give the governing body the power  
15 to:

16 (a) limit the use within its  
17 jurisdiction of any fireworks not listed in Paragraph (1) of  
18 this subsection to areas that are paved or barren or that have  
19 a readily accessible source of water for use by the homeowner  
20 or the general public;

21 (b) ban the use of all fireworks within  
22 wildlands in its jurisdiction, after consultation with the  
23 state forester; and

24 (c) ban or restrict the sale or use of  
25 display fireworks.

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1 C. The municipal governing body's proclamation  
2 declaring an exceptional, extreme or severe drought condition  
3 shall be issued no less than twenty days prior to a holiday for  
4 which fireworks may be sold. The proclamation shall explain  
5 restrictions on the sale or use of fireworks and permitted  
6 sales or uses of fireworks.

7 D. A municipal governing body's proclamation shall  
8 be effective for thirty days and the governing body may issue  
9 succeeding proclamations if exceptional, extreme or severe  
10 drought conditions warrant. A proclamation may be modified or  
11 rescinded within its thirty-day period by the governing body  
12 upon conducting an emergency hearing to determine if weather  
13 conditions have improved.

14 E. The governing body of a county may hold a  
15 hearing to determine if fireworks restrictions should be  
16 imposed within the unincorporated portions of the county  
17 affected by exceptional, extreme or severe drought conditions.  
18 The findings of the governing body shall be based on current  
19 drought indices published by the [~~national weather service~~]  
20 United States drought monitor and any other relevant  
21 information supplied by the [~~United States forest service~~]  
22 southwest coordination center.

23 F. Pursuant to any hearing under Subsection E of  
24 this section, the governing body of a county shall issue a  
25 proclamation declaring exceptional, extreme or severe drought

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1 conditions within the unincorporated portions of the county if  
2 the governing body determines such conditions exist. The  
3 governing body's proclamation shall:

4 (1) [~~shall~~] ban the sale and use of  
5 [~~missile-type rockets, helicopters, aerial spinners, stick-type~~  
6 ~~rockets~~] aerial devices and ground-audible devices within the  
7 affected drought area; and

8 (2) [~~shall~~] give the governing body the power  
9 to:

10 (a) limit the use within its  
11 jurisdiction of any fireworks not listed in Paragraph (1) of  
12 this subsection to areas that are paved or barren or that have  
13 a readily accessible source of water for use by the homeowner  
14 or the general public;

15 (b) ban the use of all fireworks within  
16 wildlands in its jurisdiction, after consultation with the  
17 state forester; and

18 (c) ban or restrict the sale or use of  
19 display fireworks.

20 G. The county governing body's proclamation  
21 declaring an exceptional, extreme or severe drought condition  
22 shall be issued no less than twenty days prior to a holiday for  
23 which fireworks may be sold. The proclamation shall explain  
24 restrictions on the sale or use of fireworks and permitted  
25 sales or uses of fireworks.

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1           H. Except as otherwise provided in this subsection,  
2 a proclamation shall be effective for thirty days, and the  
3 county governing body may issue succeeding proclamations if  
4 exceptional, extreme or severe drought conditions warrant. A  
5 proclamation may be modified or rescinded within its thirty-day  
6 period by the governing body upon conducting an emergency  
7 hearing to determine if weather conditions have improved.

8           I. Upon request of a governing body of a  
9 municipality or county, the forestry division of the energy,  
10 minerals and natural resources department is authorized to  
11 adopt and enforce emergency rules within the municipality or  
12 county that completely ban or partially ban or restrict the  
13 sale or use of all fireworks within the municipality or county  
14 requesting the emergency rules if extreme fire danger exists  
15 within the municipality or county, or in a portion of the  
16 municipality or county.

17           J. In adopting emergency rules pursuant to  
18 Subsection I of this section, the forestry division shall:

19                   (1) use the southwest coordination center as  
20 the source of information for the national fire danger rating  
21 system;

22                   (2) provide that the rules shall be in effect  
23 for no longer than thirty days and be automatically repealed at  
24 the end of this time period;

25                   (3) obtain the governor's written approval of

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1 the final rules prior to the rules becoming effective and, if  
2 the governor disapproves the final rules, the forestry division  
3 shall not adopt the rules;

4 (4) modify or rescind the rules by emergency  
5 rulemaking within twenty-four hours while the rules are in  
6 effect if the conditions warranting the rules no longer exist;  
7 and

8 (5) request that any adjacent Indian nations,  
9 tribes or pueblos consider imposing the same or similar  
10 emergency rules for areas within their jurisdiction.

11 K. The forestry division may reissue and enforce an  
12 emergency rule after the expiration of the initial thirty days  
13 if conditions pursuant to Subsection I of this section continue  
14 within the municipality or county requesting the emergency  
15 rule."

16 SECTION 2. EMERGENCY.--It is necessary for the public  
17 peace, health and safety that this act take effect immediately.