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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17 /17

SPONSOR HBIC LAST UPDATED _____ HB 272/HBICS

SHORT TITLE Import & Sale of Firewood SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	NMDA Operating Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals & Natural Resources Department (EMNRD)
 New Mexico Department of Agriculture (NMDA)
 Office of the Attorney General (OAG)

SUMMARY

Synopsis of House Business and Industry Committee Substitute

The House Business and Industry Substitute for House Bill 272 requires NMDA regulate the transportation and sale of firewood within the state. Firewood means whole or split pieces of wood less than 48 inches long and in a form commonly used for burning in campfires, stoves or fireplaces. CS/HB 272 contains provisions restricting:

- transportation of firewood into the state for both personal use and sale unless it is sourced from New Mexico or has been treated as prescribed by NMDA;
- sale in the state of firewood sourced outside the state unless the firewood has been labeled and treated as required by NMDA rules; and
- transporting or supplying firewood within the state from a source outside the state for other than personal use unless it is labeled as required by NMDA and the seller maintains documentation as required by NMDA.

Documentation for firewood transported or supplied in New Mexico must include information

regarding the source, the supplier, any treatment and eventual disposition of the firewood. NMDA rules shall include required retention time for such documentation. NMDA may inspect documentation and the inventory and facilities of persons transporting, supplying or selling firewood, and may sample it for evidence of invasive species. If the source of firewood is subject to state or federal quarantine to control plant disease or pest, any harvesting, treating, transporting, supplying or selling shall be in conformance with that quarantine.

FISCAL IMPLICATIONS

NMDA notes the bill provides no authorization for licensing, fee collecting or other methods of fiscal support for this program. Recognizing the breadth of this new regulatory program that includes a considerable number of firewood wholesalers and retailers (i.e. convenience stores, gas stations, supermarkets), it expresses concern that these new regulatory duties will compromise other statutory programs by shifting limited resources away from those programs.

SIGNIFICANT ISSUES

In its earlier analysis, NMDA acknowledged the important issue and the proactive approach that HB 272 is taking in addressing invasive forest pests. The Department reported it completed a federally-funded statewide survey of retail outlets to determine the sources of firewood, labeling compliance, and treatments. Results of the survey determined that retail firewood was in compliance with federal treatment requirements for its region of origin, met state labeling and other federal treatment requirements, and found to be of low risk regarding the movement of invasive pests into New Mexico.

As to the requirements that it set treatment protocols, NMDA advised:

States generally use United States department of agriculture firewood treatment schedules that are outlined in section T314 of the United States department of agriculture treatment manual. Treatment schedules/methods outlined in T314 for firewood are heat and fumigation. New Mexico department of agriculture anticipates that investment in kilns or cost to fumigate to the New Mexico firewood industry would be considerable and may be limited in many areas of the state.

NMDA advises it is supportive of all efforts to protect the states ecosystems from new and invasive pests. If the intent of this bill is to reduce the risk of introducing new plant pests into New Mexico's ecosystems, or to contain the spread of a new plant pest within the state, the exemption of wood 48-inches and longer from regulations significantly compromises that intent. In the event of an immediate firewood related pest issue, additional regulations would need to be promulgated.

The Forestry Division of EMNRD reports that under the Forest Conservation Act (FCA) (Sections 68-2-1 through 25, NMSA 1978) it regulates commercial harvesting of firewood for sale if the harvest occurs on 75 acres or more in state forests, or on a combination of areas totaling 75 acres or more on the same or adjacent properties within a calendar year. See 19.20.4.8 and .9 NMAC. HB 272 contains no provisions governing any overlap between the FCA and this bill's provisions.

EMNRD also notes that there is no requirement for a permit or license to transport or sell firewood in HB 272; instead, it vaguely requires that transporters or sellers maintain records, certificates or other documents as required by NMDA. In its earlier analysis, EMNRD pointed out the bill also does not address enforcement, unlike the enforcement provision found in Section 68-2-17 of the FCA, or set any penalties for non-compliance, such as those found in Section 68-2-14 of the FCA, making a violation of that act or any rules and regulations promulgated under it a misdemeanor. In its earlier analysis, OAG noted this omission as well, and suggested it may be important to distinguish violations for personal use from those involving commercial purposes.

TECHNICAL ISSUES

Since this substitute no longer contains language prohibiting import and sales of firewood from out of state, the phrase “PROHIBITING IMPORT AND SALES OF FIREWOOD FROM OTHER STATES” appearing on page 1, lines 11-12 should be stricken.

Since the substitute requires recordkeeping only as to firewood sourced from outside the state, the phrase “NEW MEXICO” in line 13, page 1 should be modified to be “NON-NEW MEXICO”.

Section 1(B) addresses firewood sourced from within the state as well as from elsewhere, so the word “into” should be replaced with the word “within” or the phrase “or within” added in line 25 on page 1.

OTHER SUBSTANTIVE ISSUES

NMDA notes that under weights and measures law (Sections 57-17-1 through 19 NMSA 1978) and state regulations governing method of sale of commodities (21.16.4 NMAC), it is provided authority and regulations related to the selling of firewood. Under the Pest Control Act (Sections 76-6-1 through 16 NMSA 1978) it is provided general authority to restrict the movement of plant pests by use of quarantine measures.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMDA reports that it will continue to rely on federal quarantine regulations and current plant protection and labeling regulations to protect the state from invasive forest pests.

MD/sb/jle