

1 HOUSE BILL 195

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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9  
10 AN ACT

11 RELATING TO FORESTRY; AMENDING THE FOREST CONSERVATION ACT;  
12 AUTHORIZING THE FORESTRY DIVISION OF THE ENERGY, MINERALS AND  
13 NATURAL RESOURCES DEPARTMENT TO CONTRACT FOR AND CONDUCT FOREST  
14 FIRE PREVENTION, SUPPRESSION, CONTROL, SUPPRESSION  
15 REHABILITATION AND REPAIR, POST-FIRE SLOPE STABILIZATION,  
16 EROSION CONTROL, RIPARIAN RESTORATION, SEEDING AND  
17 REFORESTATION OF BURNED AREAS; REMOVING REFERENCES TO THE  
18 REPEALED FOREST CONSERVATION FUND; MAKING TECHNICAL CHANGES;  
19 AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 68-2-1 NMSA 1978 (being Laws 1959,  
23 Chapter 122, Section 1, as amended) is amended to read:

24 "68-2-1. SHORT TITLE.--Sections 68-2-1 through ~~[68-2-25]~~  
25 68-2-27 NMSA 1978 may be cited as the "Forest Conservation

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1 Act"."

2 SECTION 2. Section 68-2-2 NMSA 1978 (being Laws 1959,  
3 Chapter 122, Section 2) is amended to read:

4 "68-2-2. ACCEPTANCE OF FEDERAL LAWS.--The state [~~of New~~  
5 ~~Mexico~~] is authorized to accept the provisions of the act of  
6 congress dated June 7, 1924 (43 Stat. 653) commonly known as  
7 the Clarke-McNary Act and the act of congress dated [~~August 25,~~  
8 ~~1950~~] July 1, 1978 (92 Stat. 365) commonly known as the  
9 Cooperative [~~Forest Management Act and the act of congress~~  
10 ~~dated June 25, 1947 (61 Stat. 177)~~ commonly known as the ~~Forest~~  
11 ~~Pest Control Act~~] Forestry Assistance Act of 1978, as amended."

12 SECTION 3. Section 68-2-3 NMSA 1978 (being Laws 1959,  
13 Chapter 122, Section 3, as amended) is amended to read:

14 "68-2-3. STATE FORESTER--COMPENSATION--[SEAL]  
15 QUALIFICATIONS.--

16 A. The director of the forestry division of the  
17 energy, minerals and natural resources department is the "state  
18 forester" and shall be paid a salary, set by the secretary of  
19 energy, minerals and natural resources [~~to be paid from the~~  
20 ~~forest conservation fund. The division shall adopt a seal and~~  
21 ~~such seal affixed to any paper signed by the state forester~~  
22 ~~shall be prima facie evidence of the due execution thereof].~~

23 B. No individual may be appointed as the state  
24 forester unless [~~he~~] the individual is, by reason of scientific  
25 education and experience, knowledgeable in the principles of

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1 forest management."

2 SECTION 4. Section 68-2-6 NMSA 1978 (being Laws 1959,  
3 Chapter 122, Section 6, as amended) is amended to read:

4 "68-2-6. DIVISION TO SERVE AS CONTRACTING AGENCY FOR  
5 STATE--CONTRACTING AUTHORITY.--For the purposes of the Forest  
6 Conservation Act, the forestry division of the energy, minerals  
7 and natural resources department is designated as the agent of  
8 the state and is authorized to enter into contracts and  
9 cooperative agreements with the secretary of agriculture of the  
10 United States of America, private landowners, the commissioner  
11 of public lands of the state, individuals, corporations or  
12 other local, state, federal and private agencies or  
13 organizations to [~~prevent and suppress forest fires, brush~~  
14 ~~fires, grass fires or other wild fires, to do research,~~  
15 ~~establish nurseries; and furnish technical advice to the people~~  
16 ~~of the state] carry out the provisions of the Forest  
17 Conservation Act and to do all other acts necessary to take  
18 advantage of and carry out the provisions of the acts of  
19 congress [~~hereinbefore set out and all other acts of congress~~  
20 ~~which are promulgated for forest conservation or rural fire~~  
21 ~~defense] promulgated for the purposes of the Forest  
22 Conservation Act and the federal Cooperative Forestry  
23 Assistance Act of 1978, as amended."~~~~

24 SECTION 5. Section 68-2-7 NMSA 1978 (being Laws 1967,  
25 Chapter 208, Section 1) is amended to read:

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1 "68-2-7. FOREST FIRE DEFINED.--As used in the Forest  
2 Conservation Act, "forest fire" means a fire burning  
3 uncontrolled on lands covered wholly or in part by timber,  
4 brush, grass, grain or other [~~inflammable~~] vegetation."

5 SECTION 6. Section 68-2-8 NMSA 1978 (being Laws 1967,  
6 Chapter 208, Section 2, as amended) is amended to read:

7 "68-2-8. [~~STATEWIDE~~] FORESTRY DIVISION RESPONSIBILITY FOR  
8 STATEWIDE FOREST FIRE PROTECTION AND FOREST CONSERVATION--  
9 AUTHORITY--POLICE POWER.--

10 A. ~~The [state shall have the responsibility]~~  
11 forestry division of the energy, minerals and natural resources  
12 department is responsible for the conservation of forests and  
13 forest resources and the prevention and suppression of forest  
14 fires on all nonfederal, nonmunicipal lands in the state.

15 [~~Activities authorized under this section shall include, but~~  
16 ~~not be limited to, cooperation with federal, state and local~~  
17 ~~agencies in the development of systems and methods for the~~  
18 ~~prevention, control, suppression and prescribed use of fires on~~  
19 ~~rural lands and within rural communities; and providing] The  
20 division, whether independently or in cooperation with federal,  
21 state or local agencies, is authorized to:~~

- 22 (1) conserve forests and forest resources;  
23 (2) maintain and improve forest health;  
24 (3) prevent, control and suppress forest  
25 fires;

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- 1                   (4) conduct forest fire suppression  
2 rehabilitation and repair;
- 3                   (5) conduct post-fire slope stabilization,  
4 erosion control, riparian restoration, seeding and  
5 reforestation of burned areas;
- 6                   (6) research forestry and forest fires;  
7                   (7) prescribe uses of fires;  
8                   (8) conduct urban and community forestry;  
9                   (9) establish and support nurseries;  
10                  (10) furnish forestry and forest fire-related  
11 technical advice to the people of the state, including  
12 technical advice and projects related to the mitigation of or  
13 adaptation to changing climatic conditions; and
- 14                  (11) provide financial, technical and related  
15 assistance to [~~others~~] local governments to organize, train and  
16 equip local [~~fire-fighting forces~~] firefighters to prevent,  
17 control and suppress forest fires threatening the natural  
18 resources of rural forest areas or communities. [~~For such~~  
19 ~~purposes:~~
- 20                  A. ~~The police power of the state shall extend to~~  
21 ~~such control of private forest lands as shall be necessary for~~  
22 ~~the prevention and suppression of forest fires.]~~
- 23                  B. The [~~state forester~~] forestry division and [~~his~~]  
24 the division's agents:
- 25                  (1) shall have unrestricted access to private

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1 and state lands, including the use of roads and trails [~~in~~  
2 ~~order~~] to carry out forest fire prevention and suppression work

3 [~~G. the state forester and his agents~~]; and

4 (2) shall not be liable to civil action for  
5 trespass or for damages for acts done in the course of their  
6 official duties unless otherwise expressly provided by contract  
7 or agreement with the landowner, which contract or agreement is  
8 made pursuant to the provisions of the Forest Conservation Act.

9 [and

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

16 C. The police power of the state shall extend to  
17 such control of private forest lands as is necessary for the  
18 prevention and suppression of forest fires."

19 SECTION 7. Section 68-2-9 NMSA 1978 (being Laws 1967,  
20 Chapter 208, Section 3) is amended to read:

21 "68-2-9. PENALTY FOR OBSTRUCTION.--Any person obstructing  
22 the access of the [~~state forester or his~~] forestry division of  
23 the energy, minerals and natural resources department or the  
24 division's agents to lands, [~~failing to obey any summons to~~  
25 ~~appear and assist in the suppression of a forest fire or~~

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1 ~~refusing to furnish tools and equipment~~] as provided in Section  
2 [~~62-3-6.2 New Mexico Statutes Annotated, 1953 Compilation~~]  
3 68-2-8 NMSA 1978, is guilty of a misdemeanor and upon  
4 conviction may be sentenced to not less than thirty days [~~or~~]  
5 nor more than ninety days in the county jail or fined not less  
6 than one hundred dollars (\$100) [~~or~~] nor more than one thousand  
7 dollars (\$1,000), or both such imprisonment and fine."

8 SECTION 8. Section 68-2-11 NMSA 1978 (being Laws 1959,  
9 Chapter 122, Section 7, as amended) is amended to read:

10 "68-2-11. CONTRACTS FOR PROTECTION OF FOREST AREAS.--The  
11 commissioner of public lands is authorized to enter into  
12 contracts and cooperative agreements with the forestry division  
13 of the energy, minerals and natural resources department for  
14 the protection and conservation of [~~forest~~] forests and denuded  
15 forest areas under [~~his~~] the commissioner's jurisdiction and  
16 control and is authorized to pay the assessments thereunder  
17 from the state land office maintenance fund, provided that such  
18 contracts and agreements do not commit the use of the lands in  
19 a manner and do not entail expenditures of the maintenance fund  
20 contrary to the provisions of the act of congress dated June  
21 20, 1910, entitled Enabling Act for New Mexico."

22 SECTION 9. Section 68-2-14 NMSA 1978 (being Laws 1959,  
23 Chapter 122, Section 9, as amended) is amended to read:

24 "68-2-14. ENFORCEMENT OF LAWS--INVESTIGATION OF  
25 VIOLATIONS.--

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1           A. The forestry division of the energy, minerals  
2 and natural resources department is authorized to enforce all  
3 laws and rules [~~and regulations~~] relating to all forested, cut-  
4 over or brush lands lying within the state under the following  
5 circumstances:

6                   [A.] (1) prevention and suppression of forest  
7 fires;

8                   [B.] (2) logging and timber operations and  
9 practices;

10                   [C.] (3) trespass, waste and littering; and

11                   [D.] (4) conservation of [~~commercial forest~~  
12 ~~lands~~] forests and forest resources and products. [~~In~~  
13 ~~addition~~]

14           B. The state forester, [~~and~~] all persons  
15 [~~designated by him~~] the state forester designates as peace  
16 officers and any other peace officers are authorized to go upon  
17 [~~such lands~~] forested, cut-over or brush lands lying within the  
18 state to [~~make investigations concerning~~] investigate  
19 violations of the [~~laws, rules and regulations~~] Forest  
20 Conservation Act and are given the necessary police powers to  
21 apprehend and arrest on warrant issued by any magistrate or  
22 judge of the state for violation of the [~~laws, rules and~~  
23 ~~regulations~~] Forest Conservation Act or without warrant for  
24 violations thereof committed in their presence and shall not be  
25 liable to civil actions in trespass for acts done in discharge

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1 of their duties."

2 SECTION 10. Section 68-2-16 NMSA 1978 (being Laws 1959,  
3 Chapter 122, Section 11, as amended) is amended to read:

4 "68-2-16. RULES ~~[AND REGULATIONS]~~ OF DIVISION.--The  
5 forestry division of the energy, minerals and natural resources  
6 department is authorized to make and enforce rules ~~[and~~  
7 ~~regulations]~~ not in conflict with any law now in force as it  
8 deems necessary for the prevention and suppression of forest  
9 ~~[or brush]~~ fires, ~~[and]~~ for the control of forest ~~[pests]~~  
10 insects or diseases and for the application of commercial or  
11 silvicultural forest practices within the state. The ~~[rule-~~  
12 ~~making]~~ rulemaking power includes ~~[but is not limited to]~~ the  
13 requiring of registration of sawmills, declaring of designated  
14 areas to be high hazard fire areas and closing them to entry by  
15 the general public for reasonable periods and requiring  
16 ~~[commercial]~~ native forest vegetative types to be harvested or  
17 treated in such manner as to support forest practices that  
18 maintain and enhance the ~~[economic]~~ benefits of forests and  
19 forest resources to New Mexico. Rules ~~[and regulations]~~ shall  
20 be provided to all interested parties upon request. Nothing in  
21 the Forest Conservation Act shall prevent a landowner  
22 ~~[hereafter]~~ from converting forest vegetative types to  
23 nonforest vegetative types for such purposes as range, wildlife  
24 habitat, farming, surface mining or subdivision development;  
25 provided, however, any slash resulting from such conversion

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1 shall be treated in a manner that will minimize the spread of  
2 forest fires and the possibility of insect or disease  
3 epidemic."

4 SECTION 11. Section 68-2-22 NMSA 1978 (being Laws 1961,  
5 Chapter 200, Section 1, as amended) is amended to read:

6 "68-2-22. CUTTING AND REMOVING WOODY MATERIAL WITHOUT  
7 WRITTEN CONSENT.--

8 A. As used in this section:

9 (1) "owner" means any public agency, person,  
10 partnership, firm, corporation and recognized agents owning or  
11 having legal control to the surface rights of the land upon  
12 which the woody material is located and having legal authority  
13 to issue permits or enter into agreements for the disposal of  
14 the woody material; and

15 (2) "woody material" includes any live or dead  
16 evergreen, coniferous or deciduous tree, branch, bough, bush,  
17 sapling or shrub in its natural condition, trimmed or  
18 untrimmed, and with or without roots.

19 B. No person shall cut, remove, transport or sell  
20 any woody material without written consent of the owner or  
21 proof of ownership, whether the land is publicly or privately  
22 owned. The written consent shall contain a legal description  
23 of the land where the woody material is removed, the name and  
24 address of the legal owner, the volume or amount of material to  
25 be removed, the date of execution and the expiration date of

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1 the consent. In addition, any person purchasing woody material  
2 from another for the purpose of resale must possess a valid  
3 bill of sale containing the date of sale, the amount of  
4 material purchased and the name, address and signature of the  
5 seller. The written consent, bill of sale or a true copy shall  
6 be carried by every person in charge of cutting, removing,  
7 transporting or selling the woody material and shall be  
8 exhibited to any [~~officer of the law, forestry agent, forest~~  
9 ~~ranger, forest patrolman or conservation~~] peace officer at  
10 [~~his~~] the officer's request [~~at any time~~]. This provision  
11 shall not apply to campers, picnickers, hunters and [~~fishermen~~]  
12 persons fishing who gather woody material for use in the  
13 immediate vicinity of their campsite or private landowners  
14 removing woody material from their own land for their personal  
15 use."

16 SECTION 12. Section 68-2-24 NMSA 1978 (being Laws 1979,  
17 Chapter 395, Section 9) is amended to read:

18 "68-2-24. FOREST LAND POLICY.--Recognizing that the  
19 forest makes a vital contribution to New Mexico by providing  
20 wood products, jobs, grazing, quality water, wildlife habitat,  
21 young trees, taxes and other economic benefits, it is hereby  
22 declared to be the public policy of the state to adopt forest  
23 practices that maintain and enhance such benefits and such  
24 resources and to recognize varying forest resources by  
25 employing silvicultural planning, including fire prevention

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1 [which] that provides for the removal of trees in a manner that  
2 provides reasonable assurance for the natural or artificial  
3 regeneration of [~~commercial~~] native tree species; provided,  
4 however, nothing in this section shall be in conflict with any  
5 law now in force."

6 SECTION 13. Section 68-2-25 NMSA 1978 (being Laws 1979,  
7 Chapter 395, Section 10) is amended to read:

8 "68-2-25. FOREST OWNER ASSISTANCE.--Upon the request of  
9 any landowner, the state forester shall advise and encourage  
10 the use of good management practices through an educational  
11 program and by providing technical forestry assistance to any  
12 landowner for specific sites prior to and during harvesting or  
13 other forestry-related activities."

14 SECTION 14. Section 68-2-26 NMSA 1978 (being Laws 1987,  
15 Chapter 143, Section 4) is amended to read:

16 "68-2-26. ENFORCEMENT--FOREST CONSERVATION ACT.--Any  
17 [~~officer of the law, forestry agent, forest ranger, forest~~  
18 ~~patrolman or conservation~~] peace officer enforcing the  
19 provisions of the Forest Conservation Act may:

20 A. stop any vehicle or means of conveyance  
21 containing any woody material for the purpose of [~~making an~~]  
22 inspection and investigation;

23 B. inspect the woody material in any vehicle or  
24 other means of conveyance, including common carrier; [~~and~~]

25 C. seize and hold any woody material cut, removed,

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1 piled, transported or offered for sale in violation of this  
2 section. Upon determination by the appropriate court that a  
3 section of the Forest Conservation Act has been violated and  
4 the court's issuance of an order authorizing the sale, the  
5 forestry division of the energy, minerals and natural resources  
6 department shall sell the woody material and all money  
7 collected is to be deposited into the forest land protection  
8 revolving fund; and

9 D. seize and hold any property used in violation of  
10 this section and, upon determination of the appropriate court  
11 that a section of the Forest Conservation Act has been  
12 violated, keep or dispose of the property upon order of the  
13 district court. All money collected, if any, shall be  
14 deposited into the forest land protection revolving fund."

15 SECTION 15. Section 68-2-28 NMSA 1978 (being Laws 1987,  
16 Chapter 143, Section 6, as amended) is amended to read:

17 "68-2-28. FOREST LAND PROTECTION REVOLVING FUND  
18 CREATED.--

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

8 (1) for the administration, implementation and  
9 enforcement of the Forest Conservation Act;

10 (2) to administer and fund forest and  
11 watershed management projects, including acquisition of tools  
12 and equipment and expenses incurred by the forestry division in  
13 planning and supervising forest and watershed management  
14 projects;

15 (3) to fund approved projects pursuant to the  
16 Forest and Watershed Restoration Act; and

17 (4) to administer the Prescribed Burning Act.

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

20 SECTION 16. REPEAL.--Sections 68-2-19 and 68-2-23 NMSA  
21 1978 (being Laws 1959, Chapter 122, Section 14 and Laws 1979,  
22 Chapter 395, Section 8, as amended) are repealed.