

1 AN ACT

2 RELATING TO FORESTRY; AMENDING THE FOREST CONSERVATION ACT;  
3 AUTHORIZING THE FORESTRY DIVISION OF THE ENERGY, MINERALS AND  
4 NATURAL RESOURCES DEPARTMENT TO CONTRACT FOR AND CONDUCT  
5 FOREST FIRE PREVENTION, SUPPRESSION, CONTROL, SUPPRESSION  
6 REHABILITATION AND REPAIR, POST-FIRE SLOPE STABILIZATION,  
7 EROSION CONTROL, RIPARIAN RESTORATION, SEEDING AND  
8 REFORESTATION OF BURNED AREAS; REMOVING REFERENCES TO THE  
9 REPEALED FOREST CONSERVATION FUND; MAKING TECHNICAL CHANGES;  
10 AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

15 "68-2-1. SHORT TITLE.--Sections 68-2-1 through 68-2-27  
16 NMSA 1978 may be cited as the "Forest Conservation Act"."

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

19 "68-2-2. ACCEPTANCE OF FEDERAL LAWS.--The state is  
20 authorized to accept the provisions of the act of congress  
21 dated June 7, 1924 (43 Stat. 653) commonly known as the  
22 Clarke-McNary Act and the act of congress dated July 1, 1978  
23 (92 Stat. 365) commonly known as the Cooperative Forestry  
24 Assistance Act of 1978, as amended."

25 SECTION 3. Section 68-2-3 NMSA 1978 (being Laws 1959,

1 Chapter 122, Section 3, as amended) is amended to read:

2 "68-2-3. STATE FORESTER--COMPENSATION--  
3 QUALIFICATIONS.--

4 A. The director of the forestry division of the  
5 energy, minerals and natural resources department is the  
6 "state forester" and shall be paid a salary, set by the  
7 secretary of energy, minerals and natural resources.

8 B. No individual may be appointed as the state  
9 forester unless the individual is, by reason of scientific  
10 education and experience, knowledgeable in the principles of  
11 forest management."

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

14 "68-2-6. DIVISION TO SERVE AS CONTRACTING AGENCY FOR  
15 STATE--CONTRACTING AUTHORITY.--For the purposes of the Forest  
16 Conservation Act, the forestry division of the energy,  
17 minerals and natural resources department is designated as  
18 the agent of the state and is authorized to enter into  
19 contracts and cooperative agreements with the secretary of  
20 agriculture of the United States of America, private  
21 landowners, the commissioner of public lands of the state,  
22 individuals, corporations or other local, state, federal and  
23 private agencies or organizations to carry out the provisions  
24 of the Forest Conservation Act and to do all other acts  
25 necessary to take advantage of and carry out the provisions

1 of the acts of congress promulgated for the purposes of the  
2 Forest Conservation Act and the federal Cooperative Forestry  
3 Assistance Act of 1978, as amended."

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

6 "68-2-7. FOREST FIRE AND SUPPRESSION DEFINED.--As used  
7 in the Forest Conservation Act:

8 A. "forest fire" means a fire burning uncontrolled  
9 on lands covered wholly or in part by timber, brush, grass,  
10 grain or other vegetation; and

11 B. "suppression" means all of the activities to  
12 extinguish, limit or contain forest fire spread."

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

15 "68-2-8. FORESTRY DIVISION RESPONSIBILITY FOR STATEWIDE  
16 FOREST FIRE PROTECTION AND FOREST CONSERVATION--AUTHORITY--  
17 POLICE POWER.--

18 A. The forestry division of the energy, minerals  
19 and natural resources department is responsible for the  
20 conservation of forests and forest resources and the  
21 prevention and suppression of forest fires on all nonfederal,  
22 nonmunicipal lands in the state. The division, whether  
23 independently or in cooperation with federal, state or local  
24 agencies, is authorized to:

25 (1) conserve forests and forest resources;

- 1 (2) maintain and improve forest health;
- 2 (3) prevent, control and suppress forest
- 3 fires;
- 4 (4) conduct forest fire suppression
- 5 rehabilitation and repair;
- 6 (5) conduct post-fire slope stabilization,
- 7 erosion control, riparian restoration, seeding and
- 8 reforestation of burned areas;
- 9 (6) research forestry and forest fires;
- 10 (7) prescribe uses of fires;
- 11 (8) conduct urban and community forestry;
- 12 (9) establish and support nurseries;
- 13 (10) furnish forestry and forest fire-
- 14 related technical advice to the people of the state,
- 15 including technical advice and projects related to the
- 16 mitigation of or adaptation to changing climatic conditions;
- 17 and
- 18 (11) provide financial, technical and
- 19 related assistance to local governments to organize, train
- 20 and equip local firefighters to prevent, control and suppress
- 21 forest fires threatening the natural resources of rural
- 22 forest areas or communities.

23 B. The forestry division and the division's  
24 agents:

- 25 (1) shall have unrestricted access to

1 private and state lands, including the use of roads and  
2 trails to carry out forest fire suppression work; and

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

9 C. The police power of the state shall extend to  
10 such control of private forest lands as is necessary for the  
11 suppression of forest fires.

12 D. The authorization provided in Subsection A of  
13 this section with respect to forest conservation, fire  
14 prevention and post-fire forest rehabilitation activities,  
15 but not forest fire suppression activities, is to be  
16 exercised in cooperation and pursuant to an agreement with  
17 the underlying landowner or land manager."

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

20 "68-2-9. PENALTY FOR OBSTRUCTION.--Any person  
21 obstructing the access of the forestry division of the  
22 energy, minerals and natural resources department or the  
23 division's agents to lands, as provided in Section 68-2-8  
24 NMSA 1978, is guilty of a misdemeanor and upon conviction may  
25 be sentenced to not less than thirty days nor more than

1 ninety days in the county jail or fined not less than one  
2 hundred dollars (\$100) nor more than one thousand dollars  
3 (\$1,000), or both such imprisonment and fine."

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

6 "68-2-11. CONTRACTS FOR PROTECTION OF FOREST  
7 AREAS.--The commissioner of public lands is authorized to  
8 enter into contracts and cooperative agreements with the  
9 forestry division of the energy, minerals and natural  
10 resources department for the protection and conservation of  
11 forests and denuded forest areas under the commissioner's  
12 jurisdiction and control and is authorized to pay the  
13 assessments thereunder from the state land office maintenance  
14 fund, provided that such contracts and agreements do not  
15 commit the use of the lands in a manner and do not entail  
16 expenditures of the maintenance fund contrary to the  
17 provisions of the act of congress dated June 20, 1910,  
18 entitled Enabling Act for New Mexico."

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

21 "68-2-14. ENFORCEMENT OF LAWS--INVESTIGATION OF  
22 VIOLATIONS.--

23 A. The forestry division of the energy, minerals  
24 and natural resources department is authorized to enforce all  
25 laws and rules relating to all forested, cut-over or brush

1 lands lying within the state under the following  
2 circumstances:

3 (1) prevention and suppression of forest  
4 fires;

5 (2) logging and timber operations and  
6 practices;

7 (3) trespass, waste and littering; and

8 (4) conservation of forests and forest  
9 resources and products.

10 B. The state forester, all persons the state  
11 forester designates as peace officers and any other peace  
12 officers are authorized to go upon forested, cut-over or  
13 brush lands lying within the state to investigate violations  
14 of the Forest Conservation Act and are given the necessary  
15 police powers to apprehend and arrest on warrant issued by  
16 any magistrate or judge of the state for violation of the  
17 Forest Conservation Act or without warrant for violations  
18 thereof committed in their presence and shall not be liable  
19 to civil actions in trespass for acts done in discharge of  
20 their duties."

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

23 "68-2-16. RULES OF DIVISION.--The forestry division of  
24 the energy, minerals and natural resources department is  
25 authorized to make and enforce rules not in conflict with any

1 law now in force as it deems necessary for the prevention and  
2 suppression of forest fires, for the control of forest  
3 insects or diseases and for the application of commercial or  
4 silvicultural forest practices within the state. The  
5 rulemaking power includes the requiring of registration of  
6 sawmills, declaring of designated areas to be high hazard  
7 fire areas and closing them to entry by the general public  
8 for reasonable periods and requiring native forest vegetative  
9 types to be harvested or treated in such manner as to support  
10 forest practices that maintain and enhance the benefits of  
11 forests and forest resources to New Mexico. Rules shall be  
12 provided to all interested parties upon request. Nothing in  
13 the Forest Conservation Act shall prevent a landowner from  
14 converting forest vegetative types to nonforest vegetative  
15 types for such purposes as range, wildlife habitat, farming,  
16 surface mining or subdivision development; provided, however,  
17 any slash resulting from such conversion shall be treated in  
18 a manner that will minimize the spread of forest fires and  
19 the possibility of insect or disease epidemic."

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

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

24 A. As used in this section:

25 (1) "owner" means any public agency, person,



1 partnership, firm, corporation and recognized agents owning  
2 or having legal control to the surface rights of the land  
3 upon which the woody material is located and having legal  
4 authority to issue permits or enter into agreements for the  
5 disposal of the woody material; and

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

10 B. No person shall cut, remove, transport or sell  
11 any woody material without written consent of the owner or  
12 proof of ownership, whether the land is publicly or privately  
13 owned. The written consent shall contain a legal description  
14 of the land where the woody material is removed, the name and  
15 address of the legal owner, the volume or amount of material  
16 to be removed, the date of execution and the expiration date  
17 of the consent. In addition, any person purchasing woody  
18 material from another for the purpose of resale must possess  
19 a valid bill of sale containing the date of sale, the amount  
20 of material purchased and the name, address and signature of  
21 the seller. The written consent, bill of sale or a true copy  
22 shall be carried by every person in charge of cutting,  
23 removing, transporting or selling the woody material and  
24 shall be exhibited to any peace officer at the officer's  
25 request. This provision shall not apply to campers,

1 picnickers, hunters and persons fishing who gather woody  
2 material for use in the immediate vicinity of their campsite  
3 or private landowners removing woody material from their own  
4 land for their personal use."

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

7 "68-2-24. FOREST LAND POLICY.--Recognizing that the  
8 forest makes a vital contribution to New Mexico by providing  
9 wood products, jobs, grazing, quality water, wildlife  
10 habitat, young trees, taxes and other economic benefits, it  
11 is hereby declared to be the public policy of the state to  
12 adopt forest practices that maintain and enhance such  
13 benefits and such resources and to recognize varying forest  
14 resources by employing silvicultural planning, including fire  
15 prevention that provides for the removal of trees in a manner  
16 that provides reasonable assurance for the natural or  
17 artificial regeneration of native tree species; provided,  
18 however, nothing in this section shall be in conflict with  
19 any law now in force."

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

22 "68-2-25. FOREST OWNER ASSISTANCE.--Upon the request of  
23 any landowner, the state forester shall advise and encourage  
24 the use of good management practices through an educational  
25 program and by providing technical forestry assistance to any

1 landowner for specific sites prior to and during harvesting  
2 or other forestry-related activities."

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

5 "68-2-26. ENFORCEMENT--FOREST CONSERVATION ACT.--Any  
6 peace officer enforcing the provisions of the Forest  
7 Conservation Act may:

8 A. stop any vehicle or means of conveyance  
9 containing any woody material for the purpose of inspection  
10 and investigation;

11 B. inspect the woody material in any vehicle or  
12 other means of conveyance, including common carrier;

13 C. seize and hold any woody material cut, removed,  
14 piled, transported or offered for sale in violation of this  
15 section. Upon determination by the appropriate court that a  
16 section of the Forest Conservation Act has been violated and  
17 the court's issuance of an order authorizing the sale, the  
18 forestry division of the energy, minerals and natural  
19 resources department shall sell the woody material and all  
20 money collected is to be deposited into the forest land  
21 protection revolving fund; and

22 D. seize and hold any property used in violation  
23 of this section and, upon determination of the appropriate  
24 court that a section of the Forest Conservation Act has been  
25 violated, keep or dispose of the property upon order of the

1 district court. All money collected, if any, shall be  
2 deposited into the forest land protection revolving fund."

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

5 "68-2-28. FOREST LAND PROTECTION REVOLVING FUND  
6 CREATED.--

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

21 (1) for the administration, implementation  
22 and enforcement of the Forest Conservation Act;

23 (2) to administer and fund forest and  
24 watershed management projects, including acquisition of tools  
25 and equipment and expenses incurred by the forestry division

1 in planning and supervising forest and watershed management  
2 projects;

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

5 (4) to administer the Prescribed Burning  
6 Act.

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

9 SECTION 16. REPEAL.--Sections 68-2-19 and 68-2-23 NMSA  
10 1978 (being Laws 1959, Chapter 122, Section 14 and Laws 1979,  
11 Chapter 395, Section 8, as amended) are repealed.                     

HB 195/a  
Page 13

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25