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## FISCAL IMPACT REPORT

SPONSOR: Adair DATE TYPED: 02/27/01 HB \_\_\_\_\_  
 SHORT TITLE: Recovery of Fire Damages SB 463  
 ANALYST: Dotson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of Bill

SB 463 clarifies that actions must be taken to reduce the treat of ignition of a catastrophic forest fire. If proper precautions are not taken it is a public nuisance. Currently a forest fire is considered a public nuisance when proper precautions are not taken to prevent its spread.

#### Significant Issues

The current statute does not address the “created threat” of a forest fire or require the threat to be reduced. It only requires action to be taken after the fire has started. Additionally, the current statute does not authorize the State Forester to take action to reduce the threat of fire, only to control or extinguish fires.

The bill allows a person who suffers damage because another person has set a fire or caused an area to be prone to wildfire through failure to properly manage the area, to bring suit to recover double damages through a civil action. Previously, the person could only bring suit for damages if a fire had been set.

### PERFORMANCE IMPLICATIONS

According to the Energy, Minerals and Natural Resources Department, by providing the State Forester the authority to abate a threat of catastrophic fire, it could reduce high fire hazards and charge the landowners for that work.

## **FISCAL IMPLICATIONS**

SB 463 contains no appropriation.

According to the Energy, Minerals and Natural Resources Department, the bill requires the Forestry Division to prove reasonable efforts are not being taken to reduce forest fire threats when it declares a location a public nuisance. This evidentiary responsibility may result in significantly increased administrative costs. The bill does not identify the fund or budget authority for abatement expenditures.

## **ADMINISTRATIVE IMPLICATIONS**

According to the Energy, Minerals and Natural Resources Department, the Division would be required to develop legally binding methods or measures of assessing the threat of catastrophic wildfire on a property-by-property basis for sites without the benefit of definitions. To determine whether a standing forest is safe enough or constitutes a public threat will require environmental surveys and result in significant administrative activities and costs. Forest site conditions vary significantly and change over time. To determine whether sites pose a catastrophic threat of fire would require frequent assessment costs and the development of procedures that meet constitutional requirements.

According to the Energy, Minerals and Natural Resources Department, landowners that dispute either the threat or declaration of a public nuisance could create significant administrative burdens by bringing court actions against the Division. Title searches and land surveys for sites that the Division plans to restore may be required by the state for liability reasons.

## **OTHER SUBSTANTIVE ISSUES**

According to the Energy, Minerals and Natural Resources Department, the bill provides for recovery of civil damages and for costs of abatement of a public nuisance in what is essentially a criminal statute. The absence of uniform standards that clearly identify and define management practices that could render a property susceptible to a catastrophe does not enable those responsible to take actions to reduce the threat.

According to the Energy, Minerals and Natural Resources Department, it is possible, in certain circumstances, that no reasonable amount of forest management will provide protection for locations that are extremely steep or have no safe egress. The relationship of forests to seasonal weather is such that there will be times when the threat for catastrophic fires will exist for most wildland areas in the state despite the best land management practices. In recent years, prolonged drought made even thinned forests at least prone to carrying fire. Thus, it may be difficult to assess when the threat of catastrophic fire exists.

According to the Energy, Minerals and Natural Resources Department, the bill increases the responsibility of persons, firms or corporations to take reasonable efforts to reduce or abate the threat of forest fires on lands under their control. The state may abate this threat and recover the cost of this action. Once the state takes action to treat a site against the will of, or because of the lack of action of a landowner, it may acquire increased liability. Conversely, some landowners may prefer that the state be compelled to declare a nuisance and restore the health of their forests rather than doing it themselves. This could result in the state becoming de facto land managers for private forests.

**POSSIBLE QUESTIONS**

If a wildfire has not taken place are there damages?

PD/ar