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## FISCAL IMPACT REPORT

SPONSOR Feldman                      DATE TYPED 2/03/04                      HB \_\_\_\_\_

SHORT TITLE Limit Sale & Use of Fireworks                      SB 173

ANALYST Garcia

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
		NFI		

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission, State Fire Marshal's Office  
Energy, Minerals and Natural Resources, Forestry Division

### SUMMARY

#### Synopsis of Bill

Senate Bill 173 amends portions of NMSA 1978, Sections 60-2C-2, 8 and 8.1 related to the Fireworks Licensing and Safety Act. In Section 60-2C-2, the bill adds the definition of "bosque" as a cottonwood corridor adjacent to a river. It also adds the definition of "energy release component," which is an index based on the estimated potential available energy released per unit-area in the flaming front of a fire. In Section 60-2C-8(H), the bill adds wildlands or bosque to areas where fireworks shall not be sold or used in addition to state forest land.

The bill amends Section 60-2C-8.1 (Extreme or Severe Drought Conditions) by replacing language that describes a series of steps counties or municipalities must take in order to ban the sale and use of certain fireworks in drought conditions with new provisions. The new language permits the governor to issue proclamations temporarily banning the sale and use of fireworks and imposing any other open-flame restrictions or bans by stating drought conditions exist in counties in the state. The governor must base a drought proclamation on the energy release component of the national fire danger rating system and can only act if the energy release component of the national fire danger rating system is at the ninety-seventh percentile or higher in a county.

As part of the proclamation, the governor may restrict the sale of certain types of fireworks in permanent retail stores whose primary business is tourism in counties that are experiencing drought conditions and may impose additional requirements for the sale of fireworks in those same businesses.

A municipality or county may petition the governor to issue a proclamation if the energy release component of the National Fire Danger Rating system is at the ninety-seventh percentile or higher in the municipality or county. If the governor fails to take any action after a seventy-two hour period, the county or municipality may exercise the same authority to affect the ban or restriction.

### Significant Issues

1) This bill would give the governor the lead in issuing proclamations that restrict the sale and use of fireworks when specified drought conditions are met. The governor must base his drought proclamation on the energy release component of the national fire danger rating system. The energy release component is one of the most currently accepted indices that predict how wildland fuels will burn once ignited. However, not all ecosystems and counties are represented in this system.

2) In addition, the 97<sup>th</sup> percentile is too high a standard for limiting fireworks sales and use. While the 97<sup>th</sup> percentile correlates to “extreme” fire danger, the 90<sup>th</sup> percentile correlates to the “very high” and would be more advantageous because fires ignited during a 90<sup>th</sup> percentile day can still exhibit very dangerous behavior. For example, the 2002 Montano fire in the Albuquerque bosque occurred on a day when nearby stations reported a specific energy release component value below the 97<sup>th</sup> percentile. Thus, the governor would not have been able to issue a ban if this law had been in effect at that time.

3) Also, a number of other factors and indicators besides the energy release component impact fire management. Wind significantly impacts fire danger. Spring and early summer wind events are erratic, can be severe, and can be difficult to predict. However, the forecast of severe winds could influence the desire to enact fireworks use restrictions, particularly during drought. Also, when the state is experiencing numerous large wildfires, the ability of fire protection entities to provide quick responses to new ignitions can be effected because of a lack of available resources. The energy release component does not specifically address these issues.

### **FISCAL IMPLICATIONS**

Currently, the Public Regulation Commission receives roughly \$90 thousand in revenue from license fees from fireworks vendors, which reverts to the general fund. Despite the bill’s restrictions on the sale and use of fireworks, the State Fire Marshal’s Office still expects the same amount of revenue will be generated. Consequently, the bill has no fiscal impact.

### **TECHNICAL ISSUES**

Section 60-2C-2 defines energy release component as an index based on the estimated potential available energy released per unit-area in the flaming front of a fire. This definition should be rewritten to clarify that the energy release component is not based on nor does there need to be an actual fire burning in the county subject to the proclamation. Otherwise, entities or individuals could interpret the definition of energy release component to require an actual fire.

Section 60-2C-8(H) states that no fireworks shall be sold or used on state forest land, wildlands or bosque. The definition of wildland includes all lands covered wholly or in part by timber, brush or native grass. This prevents even public displays in state parks. In addition, except for forested state trust lands and forested land within state parks, the state does not own forest lands. Therefore, if the intent of paragraph H is to prevent the use of fireworks on state owned or managed lands, "state" should be removed from paragraph H and the sentence should be revised to read: "Except for public fireworks displays approved by the governmental entity with jurisdiction over the land, no fireworks shall be sold or used on state owned or managed lands."

Section 60-2C-8.1(A) states that the governor may issue a proclamation temporarily banning the sale and use of fireworks. Section 60-2C-8.1(C) states that as part of the proclamation the governor may restrict the sale of certain types of fireworks in permanent retail stores whose primary business is tourism in counties that are experiencing drought conditions and may impose additional requirement for the sale of fireworks in those businesses. These two paragraphs read together cause confusion. If the governor may temporarily ban the sale and use of fireworks as provided in 60-2C-8.1(A) there is no need for paragraph C. Paragraph A should be amended to say that the governor may temporarily ban or restrict the sale and use of fireworks.

If the intent of paragraph C is to only allow the governor to restrict the firework sales of permanent retail stores whose primary business is tourism, it would allow the vast majority of businesses (convenience stores, large retailers, grocery stores, fireworks stands) to sale fireworks without restrictions and not be subject to the ban. Furthermore, how will enforcement agencies determine when a retail store's primary business is tourism? The bill should be amended to remove paragraph C and amend paragraph A to allow the governor to ban or restrict fireworks sales.

### **OTHER SUBSTANTIVE ISSUES**

The deleted paragraphs of 60-2C-8.1 prescribe very specific types of fireworks that local governments could ban while omitting numerous fireworks from the ban, describe fire safe areas where fireworks use could not be regulated, and required the governing bodies to publish the ban twenty days in advance of fireworks use holidays. This bill strengthens governmental powers by eliminating those conditions.

If this bill is not enacted, the Forestry Division will continue to consult with governing bodies when they are contemplating restricting use of fireworks under the process described in Section 60-2C-8.1. Those entities would be bound to base their decisions on drought indices published by the National Weather Service and information provided by the United States Forest Service. The type of fireworks that may be regulated would be prescribed. The governor would not have the lead in issuing fireworks sales and use proclamations. The use of the energy release component as the sole fire danger index would not be utilized.

**DG/lg**