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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-6-07

SPONSOR King LAST UPDATED 3-16-07 HB 919/aHJC

SHORT TITLE Liability for Costs of Fighting Forest Fires SB \_\_\_\_\_

ANALYST Woods

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB798

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals, and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of HJC Amendment

House Judiciary Committee amendment to House Bill 919 replaces the word negligently with recklessly, on Page 2, line seventeen (17) of the bill. The word “shall”, on Page 2, line twenty-three (23) is replaced with the word “may”. The amendment also removes the words “and litigation, including reasonable attorney fees” on Page 2, line twenty-five (25) and on Page 3, line one (1). In addition, all of Section 3, beginning on Page 3, line sixteen (16) is removed.

EMNRD notes that the amendment uses the word recklessly instead of negligently when determining the type of fire start that is eligible for cost reimbursement. A person acts recklessly when they consciously disregard a substantial and unjustifiable risk. A person who willfully or recklessly starts a fire now “may”, rather than “shall”, be liable for fire suppression costs incurred by the Forestry Division or cooperating entity that has an agreement with the Energy, Minerals and Natural Resources Department for wildfire suppression. The costs of litigation and attorney fees relating to fire suppression cost recovery will be borne by the entity attempting to recover the costs. The amendment removes the reference to NMSA 1978, Section 30-32-4

relating to recovery of double damages in a civil action by a private citizen for injury from a wildfire.

Synopsis of Original Bill

Section 1 of House Bill 919 amends Section 30-32-1 NMSA 1978, which allows the Energy, Minerals and Natural Resources Department, Forestry Division to recover costs incurred in fighting forest fires. Currently, a person or entity is liable for fire fighting costs only if they fail to take reasonable efforts to extinguish a fire that they have started – even if they are negligent or willful in starting the fire. The amendment would make a person or entity liable for fire fighting costs if they negligently or willfully set or cause the fire to be set.

Section 2 amends Section 30-32-2 NMSA 1978 to replace the reference “to deputy game and fish wardens” with “department of game and fish conservation officers” and clarifies that peace officers have the authority to enforce forest fire regulations and restrictions in addition to state statutes that deal with forest fires. Section 30-32-2 NMSA 1978 provides that a peace officer of the state including Department of Game and Fish conservation officers may make arrests for violations of state forest fire laws.

Section 3 replaces references in Section 30-32-4 NMSA 1978 to fires in woods, marshes or prairies with “forest fire”, which is defined in Section 30-32-1(A) as a “fire burning uncontrolled on lands covered wholly or in part by timber, brush, grain or other inflammable vegetation”. Section 30-32-4 NMSA 1978 provides that a person who sets a forest fire that injures another person or damages another’s property is subject to a civil action by the injured person for those damages.

Section 4 repeals Section 30-32-2 NMSA 1978, which allowed district courts to appoint voluntary fire wardens, who would serve without pay, at the Forestry Division’s request. The Forestry Division does not ask district courts to appoint voluntary fire wardens, so this statute is outdated and not needed.

**FISCAL IMPLICATIONS**

EMNRD indicates that this amendment would not affect the Forestry Division’s budget, but could increase reimbursement to the appropriations contingency fund, which is the fund used to pay for wild land fire suppression costs by improving the Forestry Division’s cost recovery abilities.

**SIGNIFICANT ISSUES**

With this amendment, EMNRD suggests that agencies that are under agreement with EMNRD would have the authority to recover costs incurred for fighting the wild land fire and costs of investigation and litigation if a person willfully or negligently sets a fire. As mentioned above, EMNRD can only recover costs if the person fails to take reasonable efforts to control or extinguish the fire. Many individuals who start fires, even if they are negligent in starting the fire, will contact fire fighting agencies to suppress the fire. Therefore, because the statute currently only makes an individual liable for fire fighting costs if they fail to take reasonable efforts to suppress the fire, EMNRD’s cost recovery efforts have been hampered. In addition, the current statute does not provide an incentive for individuals to be aware of hazardous fire

weather and avoid starting fires during these conditions.

EMNRD notes that the Forestry Division responds to an average of 900 fires per year that occur within the state's jurisdiction. Approximately 63 percent of these fires are human caused and the number of negligent or willful fires is estimated to be approximately twenty per year. First responders initially determine the cause of the fire and notify the Forestry Division or local law enforcement if the fire appears to be human caused. Currently the Forestry Division expends millions of dollars in emergency funds each year on wildfire suppression costs for fires on non-federal or non-municipal lands in the state.

EMNRD adds that the amendments in this bill will help the Forestry Division in its efforts to reduce person-caused wild land fires through increased public accountability and cost recovery efforts. Additionally it will benefit the division's efforts to reduce the number of person caused fires that directly impact fire suppression costs, as well as improve the division's capability to increase public safety and awareness of wild land fire dangers.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates SB798

### **OTHER SUBSTANTIVE ISSUES**

EMNRD advises that, unlike New Mexico's current law, other Western states have wild land cost recovery laws based on willfulness or negligence, including Arizona, California, Idaho, Oregon and Washington. Utah, Montana and Colorado statutes provide for wild land fire cost recovery even if the person who causes the fire was not negligent or willful in their actions. Oregon has an 80 percent success rate for its cost recovery efforts.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

EMNRD anticipates that, if the bill is not enacted, the Forestry Division's ability to obtain reimbursement for firefighting costs when a person has negligently or willfully started a wild land fire will continue to be impaired.

BFW/nt