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FISCAL IMPACT REPORT

SPONSOR McQueen ORIGINAL DATE 3/6/17
 LAST UPDATED _____ HB 286

SHORT TITLE Providing For Restriction of Sale or Use of Fireworks SB _____

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission
 Energy Minerals and Natural Resources Department
 Department of Health

SUMMARY

Synopsis of Bill

HB 286 amends the Fireworks Licensing and Safety Act (NMSA 1976 Chapter 60, Article 2C); adding a new section authorizing the State Fire Marshal Division and the Public Regulation Commission to conduct hearings to determine if restriction should be imposed on the sale and use of fireworks within the boundaries of any area of the state affected by extreme or severe drought conditions or emergency or heightened fire danger conditions. The finding of the Fire Marshal Division shall be based on current drought indices published by the national weather service, information supplied by the United States Forest Service and any other relevant information. The Fire Marshal Division shall issue a proclamation; no less than 10 days prior to a holiday for which fireworks may be sold, declaring extreme or severe drought conditions or emergency or heightened fire danger conditions if the Fire Marshal Division determines such conditions exist. Proclamation shall be effective for a period of thirty (30) days. Proclamation may be modified or rescinded upon conducting an emergency hearing to determine if fire danger conditions have improved.

HB 286 provides for local government both municipal and county to continue to conduct hearings to determine if restriction on the sale and use of fireworks shall be imposed within the boundaries of the respective local government. The local governing body shall issue a

proclamation; no less than 10 days prior to a holiday for which fireworks may be sold, declaring extreme or severe drought conditions or emergency or heightened fire danger conditions if the Fire Marshal Division determines such conditions exist. Proclamation shall be effective for a period of thirty (30) days. Proclamation may be modified or rescinded by the governing body upon conducting an emergency hearing to determine if fire danger conditions have improved.

HB 286 contains language authorizing the State Fire Marshal Division and the affected local governing bodies to impose restriction on the sale and use of fireworks.

New language is added “emergency or heightened fire danger conditions” to the circumstances in which the Fire Marshal Division and a governing body of a municipality or county may hold a hearing and issue a proclamation imposing fireworks restrictions.

FISCAL IMPLICATIONS

Fireworks licenses and permits are issued for one year. Retailers, wholesalers, and distributors may buy fewer licenses if they know or suspect restriction on the sale and use of fireworks may be imposed. Fees for licenses or permits range from \$100.0 for a retail permit to \$2,000 for a distributor license. Any license or permits purchased are not refundable.

Enforcement activities by the State Fire Marshal Division may be reduced upon issuance of proclamation of restriction on sale and use of fireworks.

The Energy Minerals and Natural Resources Department also states that wildfires result in significant costs to federal, state, and local governments. If any wildfires were prevented by this legislation, it would save fire suppression and post-fire rehabilitation costs incurred by federal, state, and local governments, as well as financial losses incurred by New Mexico residents and landowners.

SIGNIFICANT ISSUES

The Public Regulation Commission provided the following significant issues:

HB286 is unclear on the definition of “emergency or heightened fire danger conditions”.

It is unclear of the final authority where a conflict may be presented with the issuance of a proclamation between a local government’s determination and the fire marshal division determination. The significant issues arise between which entity would have superseding authority in cases of conflicting determinations between entities.

The Energy Minerals and Natural Resources Department provided the following significant issues:

HB 286 adds language to the Fireworks Licensing and Safety Act authorizing the Fire Marshal Division to impose restrictions on the sale or use of fireworks. The State Forester is already authorized under the Forest Conservation Act and 19.20.3 NMAC to issue and rescind orders imposing restrictions to prevent forest fires as conditions warrant. The current authority does not extend to the sale of fireworks.

HB 286 amends language governing when a local government can impose fireworks restrictions within its jurisdiction. Current law allows restrictions to be put in place when an area is declared to be affected by severe or extreme drought conditions. HB 286 would allow local governments and the Fire Marshal Division to also ban or restrict the sale or use of fireworks when an area is affected by emergency of heightened fire danger conditions, but it does not define or specify those conditions in terms of a particular scale or index. The terms severe and extreme drought are defined by the U.S. Drought Monitor, which classifies drought conditions as ranging from abnormally dry to exceptional, with the most intense drought rated as exceptional. Adopting terminology of the U.S. Drought Monitor would allow the state and local governments to make determinations based on a universally accepted and regularly updated source.

HB 286 amends language governing when a proclamation restricting fireworks can be issued. The bill changes it from 20 days prior to a holiday for which fireworks may be sold to 10 days before the holiday. This change could reduce the intended effectiveness of the bill by allowing 10 additional days for fireworks to have been sold prior to the restrictions being put in place.

The Department of Health provided the following significant issues:

Drought in New Mexico has resulted in corresponding fire impacts. Wildfires can quickly degrade air quality in New Mexico. Smoke generated from these fires is a complex mixture of carbon dioxide, water vapor, carbon monoxide, hydrocarbons and other organic chemicals, nitrogen oxides, and metals. Particulate matter is generated during wildfires. Particulate matter travels deeply into the respiratory tract, reaching the lungs, and can cause short-term health effects such as eye, nose, throat and lung irritation, coughing, sneezing, runny nose and shortness of breath. Exposure to fine particles can also affect lung function and worsen medical conditions such as asthma, emphysema and heart disease. Scientific studies have linked increases in daily particulate matter exposure with increased respiratory and cardiovascular hospital admissions, emergency department visits and deaths. (Franchini, M., & Mannucci, P. M. (2012). Air pollution and cardiovascular disease. *Thrombosis research*, 129(3), 230-234.)

The Southwest experienced a record wildfire season in the summer of 2011, with the largest fires in history recorded in Arizona and New Mexico. New Mexico alone suffered over 1.2 million acres of burned land, with 70% of the 2011 wildfires attributed to human causes. Smoke impacts from the fires were widespread. Wallow, the most notable fire for the 2011 season, originated in Arizona, but impacted New Mexico. The risk to populations in these communities was significant, and especially so for the young, elderly and those with certain health conditions. New Mexico wild fires in 2016 burned over 156,943 acres. The risk of fires in 2017 is again anticipated to be very high in New Mexico due to severe drought and lower than average snowfall to date.

http://gacc.nifc.gov/swcc/predictive/intelligence/ytd_historical/historical/fire_data/historical_fires_and_acres.htm

PERFORMANCE IMPLICATIONS

The Energy, Minerals and Natural Resources Department - Forestry Division has statutory authority for the prevention, control, and suppression of wild land fires on non-federal, non-municipal, and non-tribal lands within the State of New Mexico under NMSA 1978, Sections 68-2-1 through 68-2-25. The State Forester is responsible for fire program administration, including prevention activities to reduce the potential for human ignitions to cause damage to property and natural resources or loss of life from wildfires, and to reduce fire management costs.

The Forestry Division has statutory authority to implement fire restrictions pursuant to NMSA 1978, Section 68-2-16 and other sections of the Forest Conservation Act, NMSA 1978, Sections 68-2-1 to 68-2-25 and 19.20.3 NMAC. The State Forester is authorized to issue orders imposing restrictions to prevent forest fires and rescinding orders as conditions warrant.

HB 286 gives the Fire Marshal Division authority to determine if conditions warrant issuing a proclamation and taking actions to ban, limit, or restrict the use of fireworks under certain conditions. If the objective of HB 286 is to reduce the number of firework-caused fires, it may be more effective to expand the State Forester's existing authority by adding authorization to impose restrictions on the sale of fireworks.

HB 286 has the potential to enhance local governments' efforts to reduce damage and losses from human-caused wildfires, should they take advantage of the authority it gives them to ban, limit, or restrict the sale or use of fireworks under certain conditions. However, the bill does not require local governments to do so. The bill does not address the use of aerial devices, including kit-reloadable tubes, aerial spinners, helicopters, mines, missile-type rockets, multiple tube devices, roman candles, shells, stick-type rockets and similar devices.

ADMINISTRATIVE IMPLICATIONS

The Public Regulation Commission and the Fire Marshal Division will be required to increase administrative and staffs efforts to conduct hearing and emergency hearings which may be ongoing.

The Fire Marshal will be required to establish a data base in efforts to coordinate and track action of local governments throughout the state.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Counties and municipalities will continue to restrict fireworks pursuant to the Fireworks Licensing and Safety Act, Section 60-2C-8.1 NMSA 1978. The Forestry Division will continue to restrict the use of fireworks in some areas. The state will not have authority to ban, limit, or restrict the sale of fireworks when conditions warrant.

JM/jle/al