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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/21

SPONSOR Pope LAST UPDATED _____ HB _____

SHORT TITLE Wildland Arson SB 396

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Uncertain	Uncertain	Uncertain	Uncertain	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 57.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Public Defender Department (LOPD)

Office of the Attorney General (NMAG)

Energy, Minerals and Natural Resources Department (EMNRD)

State Land Office (SLO)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 396 specifically adds wildland to the list of locations or structures (such as buildings, bridges and signs), damage to which by a person maliciously setting fire or recklessly causing a fire or explosion, is punishable by a specified range of penalties in Section 30-17-5 NMSA 1978, modified by Senate Bill 396. The range of penalties depends on the monetary value of destroyed property: at the extremes, they are a petty misdemeanor for property value of less than \$250 and a second degree felony for a value of more than \$20 thousand.

“Wildland” is defined to mean forest or stream-side land, land at an interface between urban and other wildland, range land, recreation land or any other land at risk or wildfire.

Section 30-17-6 NMSA 1978, dealing with aggravated arson, is also modified by SB396, adding setting wildlife fires, and including repeat offenders within the previous ten years or using an accelerant or delaying device to ignite a fire. Aggravated arson is handled as a second degree felony.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 396. No agency indicated a direct cost to it from passage of the bill, though LOPD noted that use of the habitual offender augmentation of a sentence for previous fire-setting would increase prison populations and thus costs.

Although not able to provide an estimate of the number of people who would be convicted of arson, NMSC notes that the average person convicted of arson remains incarcerated for 704 days at a daily average cost of \$123 (704 x \$123 = \$86,592).

SIGNIFICANT ISSUES

The State Land Office notes that “the Commissioner of Public Lands, through the New Mexico State Land Office, manages over nine million acres of land (surface estate) in the State of New Mexico in trust for the benefit of New Mexico public schools, universities, hospitals, and other public institutions. The state trust land portfolio includes many thousands of acres of forested land, from the White Peak region in Colfax and Mora Counties to the Luera Mountains in Catron County. Particularly with New Mexico in prolonged drought conditions and experiencing increasing adverse effects of climate change, state trust lands are at increased fire risk. Adding wildlands to the Criminal Code’s definition of arson could help create a deterrent to activities that could potentially threaten valuable state trust land.”

EMNRD points out that “New Mexico’s Uniform Jury Instruction [Rule set 14-1704] define “recklessly” for the crime of negligent arson as conduct that creates a substantial and foreseeable risk, that the individual disregarded that risk, and that that the individual was wholly indifferent to the consequences of his or her conduct and to the welfare and safety of others. Based upon this definition, if an individual was conducting a prescribed burn and the fire escaped because of negligence rather than recklessness they would not appear to have committed the crime of negligent arson.”

As noted by AODA, the penalties for aggravated arson are laid out in Section 31-18-15 NMSA 1978, including 9 or 15 years imprisonment respectively, for aggravating arson not causing death and aggravated arson causing death.

RELATIONSHIP

Related to HB57, Prescribed Burning Act, which allows careful prescribed burning of a person’s own property, provided dictates of the state forester are followed.

TECHNICAL ISSUES

NMAG suggests “Because “land in the wildland-urban interface” is not a common term, the requester/sponsor might consider including a definition.”

LOPD notes that “the proposed section 30-17-6(C) seeks to increase even a petty misdemeanor arson charge to a second-degree aggravated arson charge if the person lit the fire with an accelerant or uses something to delay the fire’s ignition. This would include the use of accelerant to light a campfire that then *negligently* spread to damage property or, under SB396, wildlands. LOPD recommends that aggravated arson be limited to intentional conduct.”

LOPD also suggests “The definition of wildland is unclear. It covers many different types of lands but does not define what those types of lands are, such as wildland-urban interface or riparian lands. It is a very broad definition. It is unclear whether it includes both state-owned land and privately-owned land. A simpler definition may better suit the statute, such as California’s definition of “Forest land,” defined as “any brush covered land, cut-overland, forest, grasslands, or woods.” Cal. Penal Code § 450. Moreover, damage to privately-owned property, including realty, is already covered under the Criminal Damage to Property statute which charges any damage to real property of another (over \$1,000) as a fourth-degree felony. NMSA § 30-15-1.”

Similarly, “For more consistency between state statutes, the Forestry Division [of EMNRD] suggests SB396 adopt a definition of “wildland” that uses language from the definition of “forest fire” in the Forest Conservation Act and define “wildland” as “lands covered wholly or in part by timber, brush, grass, grain, or other inflammable vegetation”. This would also remove potential issues regarding what constitutes the wildland urban interface, a riparian area, recreation land, or other areas at risk for wildfire.

LAC /sb