

1 AN ACT

2 RELATING TO PRESCRIBED BURNING; ENACTING THE PRESCRIBED  
3 BURNING ACT; ALLOWING PRIVATE LANDOWNERS TO CONDUCT  
4 PRESCRIBED BURNS; PROVIDING FOR PRESCRIBED BURN PERMITS;  
5 LIMITING CIVIL LIABILITY; INSTITUTING A PRESCRIBED BURN  
6 MANAGER CERTIFICATION PROGRAM; PROVIDING FOR PRESCRIBED BURN  
7 TRAINING; PROVIDING FOR THE ESTABLISHMENT AND DISTRIBUTION OF  
8 FEES; EXPANDING USES OF THE FOREST LAND PROTECTION REVOLVING  
9 FUND.

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

12 SECTION 1. SHORT TITLE.--Sections 1 through 8 of this  
13 act may be cited as the "Prescribed Burning Act".

14 SECTION 2. DEFINITIONS.--As used in the Prescribed  
15 Burning Act:

16 A. "certified prescribed burn manager" means a  
17 person certified pursuant to the prescribed burn manager  
18 certification program;

19 B. "department" means the energy, minerals and  
20 natural resources department;

21 C. "division" means the forestry division of the  
22 department;

23 D. "extension service" means the New Mexico state  
24 university cooperative extension service;

25 E. "pile burning" means the burning of vegetation, HB 57/a  
Page 1

1 usually sticks, limbs or boles of trees and brush, resulting  
2 from land management activities, that have been stacked in  
3 piles, but does not mean the burning of a single or few small  
4 piles of yard waste or pruning debris on an individual's  
5 property; and

6 F. "prescribed burn" means the controlled  
7 application of fire to existing vegetative fuels through pile  
8 burning or the burning of vegetation over predefined areas  
9 under appropriate weather and environmental conditions for  
10 purposes of community protection, watershed resilience,  
11 silviculture, wildland fire hazard reduction, fuels  
12 reduction, rangeland improvement, wildlife management,  
13 habitat improvement, invasive species management and  
14 ecological maintenance or restoration, but does not include  
15 agricultural burning to clear fields of stubble or slash or  
16 to manage invasive species impacting crop production, as part  
17 of orchard management or to clear irrigation ditches of  
18 vegetation and debris in order to improve or restore  
19 efficient water flow and delivery.

20 SECTION 3. PRESCRIBED BURN USE.--

21 A. Prescribed burning is considered in the public  
22 interest and not a public or private nuisance.

23 B. A private landowner or a private landowner's  
24 agent, contractor or legally authorized designee shall have a  
25 right to conduct a prescribed burn on the landowner's

1 property, except when the state forester or a county or  
2 municipality issues restrictions prohibiting a prescribed  
3 burn because of drought conditions; provided that the  
4 prescribed burn is conducted with appropriate precautionary  
5 measures, including: the use of sufficient personnel and  
6 equipment; the prior notification of local fire officials;  
7 burn and contingency planning; and the use of appropriate  
8 prescribed burn techniques that cause the fire to be confined  
9 to a predetermined area.

10 SECTION 4. CIVIL LIABILITY.--

11 A. A private landowner or a private landowner's  
12 agent, contractor or legally authorized designee who is a  
13 certified prescribed burn manager and who conducts a  
14 prescribed burn is liable for any damages to property or for  
15 personal injury caused by the prescribed burn, including the  
16 reignition of a previously contained prescribed burn, if that  
17 person was negligent in starting, controlling or  
18 extinguishing the prescribed burn.

19 B. A private landowner or a private landowner's  
20 agent, contractor or legally authorized designee who is not a  
21 certified prescribed burn manager and who conducts a  
22 prescribed burn is liable for double damages to property or  
23 for personal injury caused by the prescribed burn, including  
24 the reignition of a previously contained prescribed burn, if  
25 that private landowner or that private landowner's agent,

1 contractor or legally authorized designee was negligent in  
2 starting, controlling or extinguishing the prescribed burn.

3 SECTION 5. MODEL PRESCRIBED BURN PERMITS.--The  
4 department shall promulgate rules establishing a model  
5 prescribed burn permit for use by counties or municipalities.  
6 The rules shall provide for required terms and conditions of  
7 a prescribed burn permit, including:

8 A. common terminology and definitions;

9 B. standards for data collection regarding the  
10 ownership of land, fuels used, size of the prescribed burn,  
11 location of the prescribed burn and entity conducting the  
12 prescribed burn;

13 C. the types of prescribed burning authorized by  
14 the permit;

15 D. procedures to coordinate with the requirements  
16 of the department of environment's smoke management program;

17 E. requirements for the distance of the prescribed  
18 burn from structures, buildings and fences;

19 F. the number of acres and estimated number of  
20 burn piles authorized under the permit;

21 G. requirements for notification of the public and  
22 of appropriate personnel, such as fire dispatch personnel,  
23 fire department personnel and county or municipal fire  
24 marshals, prior to and upon ignition and termination of the  
25 prescribed burn;

1           H. procedures to permit prescribed burns that  
2 cross jurisdictions; and

3           I. procedures to aggregate permit data and report  
4 annually on the effectiveness of the model prescribed burn  
5 permit.

6           **SECTION 6. CRITERIA FOR COUNTIES OR MUNICIPALITIES**  
7 **ISSUING PRESCRIBED BURN PERMITS.--**A county or municipality  
8 may adopt an ordinance to require a private landowner to  
9 obtain a permit to conduct a prescribed burn. A county or  
10 municipality that requires landowners to obtain a permit to  
11 conduct a prescribed burn shall use the model prescribed burn  
12 permit adopted by the department.

13           **SECTION 7. PRESCRIBED BURN MANAGER CERTIFICATION.--**

14           A. The division shall create a prescribed burn  
15 manager certification program accessible to private  
16 landowners and private landowners' agents, contractors or  
17 legally authorized designees who conduct prescribed burns.  
18 The certification program shall include training, which shall  
19 be provided by the extension service, on all relevant aspects  
20 of prescribed burn, including legal requirements, safety,  
21 weather, fire behavior, smoke management, prescribed burn  
22 techniques, public relations, planning and contingencies.

23           B. The department shall adopt rules to create the  
24 prescribed burn manager certification program, including the  
25 training and certification of certified prescribed burn

1 managers; training components and engagement of subject  
2 matter experts; application processes; qualification for and  
3 terms and durations of certification; types of certification,  
4 if applicable; oversight of the program; grounds and  
5 processes for renewal, suspension and revocation of  
6 certifications; and application, certification and renewal  
7 fees.

8 C. The department, by rule, may establish a fee at  
9 an amount not to exceed the amount required to recover costs  
10 that the division incurs in providing certification and  
11 processing applications for persons seeking certification as  
12 certified prescribed burn managers pursuant to this section.  
13 All proceeds from that fee shall be deposited in the forest  
14 land protection revolving fund.

15 D. Nothing in this section may be construed as  
16 creating a mandatory prescribed burn manager certification  
17 requirement to conduct prescribed burning.

18 **SECTION 8. PRESCRIBED BURN TRAINING.**--The extension  
19 service shall provide the training required for prescribed  
20 burn manager certification as specified in rules adopted by  
21 the department. The extension service may collect fees for  
22 providing the training. The fees shall not exceed the amount  
23 required to recover costs that the extension service incurs  
24 in providing the training.

25 **SECTION 9.** Section 30-32-4 NMSA 1978 (being Laws 1882,

1 Chapter 61, Section 7, as amended) is amended to read:

2 "30-32-4. DAMAGES TO PERSON INJURED.--If a person sets  
3 on fire any woods, marshes or prairies, whether the person's  
4 own or not, so as thereby to occasion damage to another  
5 person or that person's property, the person shall make  
6 satisfaction in double damages to the party injured to be  
7 recovered by civil action, unless the person is conducting a  
8 prescribed burn pursuant to the Prescribed Burning Act."

9 SECTION 10. Section 68-2-28 NMSA 1978 (being Laws 1987,  
10 Chapter 143, Section 6, as amended) is amended to read:

11 "68-2-28. FOREST LAND PROTECTION REVOLVING FUND  
12 CREATED.--

13 A. There is created in the state treasury a  
14 revolving fund to be known as the "forest land protection  
15 revolving fund". The forest land protection revolving fund  
16 shall consist of all receipts as provided by Section 68-2-26  
17 NMSA 1978, fees collected pursuant to the Prescribed Burning  
18 Act, appropriations, gifts, grants, donations and revenue  
19 received by the forestry division of the energy, minerals and  
20 natural resources department from the federal government or  
21 other state agencies and other sources for conducting forest  
22 and watershed management projects. Subject to legislative  
23 appropriation, expenditures may be made from the forest land  
24 protection revolving fund upon vouchers signed by the state  
25 forester and warrants issued by the secretary of finance and

1 administration:

2 (1) for the administration and enforcement  
3 of the Forest Conservation Act;

4 (2) to administer forest and watershed  
5 management projects, including acquisition of tools and  
6 equipment and expenses incurred by the forestry division in  
7 planning and supervising forest and watershed management  
8 projects;

9 (3) to fund approved projects pursuant to  
10 the Forest and Watershed Restoration Act; and

11 (4) to administer the Prescribed Burning  
12 Act.

13 B. Money in the forest land protection revolving  
14 fund shall not revert to the general fund." \_\_\_\_\_

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25