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SENATE BILL 300

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO PUBLIC SAFETY; AMENDING THE FIREWORKS LICENSING AND SAFETY ACT TO ALLOW THE FORESTRY DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT TO BAN THE SALE AND USE OF FIREWORKS IN EXTREME DROUGHT CONDITIONS; AMENDING THE FOREST CONSERVATION ACT TO GIVE THE FORESTRY DIVISION SPECIFIC RULEMAKING AUTHORITY ON REGULATION OF FIREWORKS; DECLARING AN EMERGENCY.

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

SECTION 1. Section 60-2C-8.1 NMSA 1978 (being Laws 1997, Chapter 17, Section 9, as amended) is amended to read:

"60-2C-8.1. EXTREME OR SEVERE DROUGHT CONDITIONS--
RESTRICTED SALE AND USE.--

A. The governing body of a municipality may hold a hearing to determine if fireworks restrictions should be

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1 imposed within the boundaries of the incorporated municipality
2 affected by extreme or severe drought conditions. The findings
3 of the governing body shall be based on current drought indices
4 published by the national weather service and any other
5 relevant information supplied by the United States forest
6 service.

7 B. Pursuant to any hearing under Subsection A of
8 this section, the governing body of a municipality shall issue
9 a proclamation declaring extreme or severe drought conditions
10 within the boundaries of the incorporated municipality if the
11 governing body determines such conditions exist. The governing
12 body's proclamation shall:

13 (1) [~~shall~~] ban the sale and use of
14 missile-type rockets, helicopters, aerial spinners, stick-type
15 rockets and ground audible devices within the affected drought
16 area; and

17 (2) [~~shall~~] give the governing body the power
18 to:

19 (a) limit the use within its
20 jurisdiction of any fireworks not listed in Paragraph (1) of
21 this subsection to areas that are paved or barren or that have
22 a readily accessible source of water for use by the homeowner
23 or the general public;

24 (b) ban the use of all fireworks within
25 wildlands in its jurisdiction, after consultation with the

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1 state forester; and

2 (c) ban or restrict the sale or use of
3 display fireworks.

4 C. The municipal governing body's proclamation
5 declaring an extreme or severe drought condition shall be
6 issued no less than twenty days prior to a holiday for which
7 fireworks may be sold. The proclamation shall explain
8 restrictions on the sale or use of fireworks and permitted
9 sales or uses of fireworks.

10 D. A municipal governing body's proclamation shall
11 be effective for thirty days and the governing body may issue
12 succeeding proclamations if extreme or severe drought
13 conditions warrant. A proclamation may be modified or
14 rescinded within its thirty-day period by the governing body
15 upon conducting an emergency hearing to determine if weather
16 conditions have improved.

17 E. The governing body of a county may hold a
18 hearing to determine if fireworks restrictions should be
19 imposed within the unincorporated portions of the county
20 affected by extreme or severe drought conditions. The findings
21 of the governing body shall be based on current drought indices
22 published by the national weather service and any other
23 relevant information supplied by the United States forest
24 service.

25 F. Pursuant to any hearing under Subsection E of
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1 this section, the governing body of a county shall issue a
2 proclamation declaring extreme or severe drought conditions
3 within the unincorporated portions of the county if the
4 governing body determines such conditions exist. The governing
5 body's proclamation shall:

6 (1) [~~shall~~] ban the sale and use of
7 missile-type rockets, helicopters, aerial spinners, stick-type
8 rockets and ground audible devices within the affected drought
9 area; and

10 (2) [~~shall~~] give the governing body the power
11 to:

12 (a) limit the use within its
13 jurisdiction of any fireworks not listed in Paragraph (1) of
14 this subsection to areas that are paved or barren or that have
15 a readily accessible source of water for use by the homeowner
16 or the general public;

17 (b) ban the use of all fireworks within
18 wildlands in its jurisdiction, after consultation with the
19 state forester; and

20 (c) ban or restrict the sale or use of
21 display fireworks.

22 G. The county governing body's proclamation
23 declaring an extreme or severe drought condition shall be
24 issued no less than twenty days prior to a holiday for which
25 fireworks may be sold. The proclamation shall explain

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1 restrictions on the sale or use of fireworks and permitted
2 sales or uses of fireworks.

3 H. Except as otherwise provided in this subsection,
4 a proclamation shall be effective for thirty days, and the
5 county governing body may issue succeeding proclamations if
6 extreme or severe drought conditions warrant. A proclamation
7 may be modified or rescinded within its thirty-day period by
8 the governing body upon conducting an emergency hearing to
9 determine if weather conditions have improved.

10 I. In the absence of a proclamation by a county as
11 set forth in this section, the forestry division of the energy,
12 minerals and natural resources department is authorized to make
13 and enforce rules imposing fireworks restrictions on all
14 nonfederal, nonmunicipal lands in the state as set forth in
15 Section 68-2-16 NMSA 1978. In adopting rules, the forestry
16 division shall:

17 (1) limit fireworks restrictions to specific
18 geographical areas within the state where an extreme fire
19 danger exists;

20 (2) determine an extreme fire danger by using
21 the energy release component of the national fire danger rating
22 system;

23 (3) designate the southwest coordination
24 center as the source of information for the national fire
25 danger rating system;

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1 (4) use the ninety-seventh percentile of
2 energy release component data set forth in a percentile
3 frequency distribution as the breakpoint for determining
4 whether an extreme fire danger exists;

5 (5) only be authorized to adopt and enforce
6 rules imposing fireworks restrictions if the value of the
7 energy release component data reaches the ninety-seventh
8 percentile or greater at a particular point in time in a
9 specific geographical area;

10 (6) set forth fireworks restrictions that
11 completely or partially ban the sale and use of fireworks;

12 (7) not enforce its rules in a county where
13 fireworks restrictions subsequently imposed by a county are
14 more restrictive than the rules imposed by the forestry
15 division;

16 (8) provide that the rules shall be in effect
17 for no longer than thirty days and be automatically repealed at
18 the end of this time period;

19 (9) obtain the governor's written approval of
20 the final rules prior to the rules becoming effective, and if
21 the governor disapproves of the final rules, the forestry
22 division shall withdraw the rules; and

23 (10) modify or rescind the rules by emergency
24 rulemaking, or the governor may modify or rescind the rules by
25 executive order, within twenty-four hours while the rules are

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1 in effect if an extreme fire danger for a specific geographical
2 area no longer exists."

3 SECTION 2. Section 68-2-16 NMSA 1978 (being Laws 1959,
4 Chapter 122, Section 11, as amended) is amended to read:

5 "68-2-16. RULES AND REGULATIONS OF DIVISION.--The
6 forestry division is authorized to make and enforce rules and
7 regulations not in conflict with any law now in force as it
8 deems necessary for the prevention and suppression of forest or
9 brush fires and for the control of forest pests and for the
10 application of commercial forest practices within the state.

11 The rulemaking power includes but is not limited to the
12 requiring of registration of sawmills, placing restrictions on
13 fireworks in specific geographical areas within the state where
14 extreme drought conditions exist pursuant to the Fireworks

15 Licensing and Safety Act, declaring of designated areas to be
16 high hazard fire areas and closing them to entry by the general
17 public for reasonable periods and requiring commercial forest
18 vegetative types to be harvested in such manner as to support
19 forest practices that maintain and enhance the economic
20 benefits of forests and forest resources to New Mexico. Rules
21 and regulations shall be provided to all interested parties
22 upon request. Nothing in the Forest Conservation Act shall
23 prevent a landowner [~~hereafter~~] from converting forest
24 vegetative types to nonforest vegetative types for such
25 purposes as range, wildlife habitat, farming, surface mining or

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1 subdivision development; provided, however, any slash resulting
2 from such conversion shall be treated in a manner that will
3 minimize the spread of forest fires and the possibility of
4 insect epidemic."

5 SECTION 3. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.