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

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

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

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

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

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

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

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

E. "pile burning" means the burning of vegetation,
usually sticks, limbs or boles of trees and brush, resulting
from land management activities, that have been stacked in
piles, but does not mean the burning of a single or few small
piles of yard waste or pruning debris on an individual's
property; and

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

SECTION 3. PRESCRIBED BURN USE.--

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

B. A private landowner or a private landowner's
agent, contractor or legally authorized designee shall have a
right to conduct a prescribed burn on the landowner's
property, except when the state forester or a county or municipality issues restrictions prohibiting a prescribed burn because of drought conditions; provided that the prescribed burn is conducted with appropriate precautionary measures, including: the use of sufficient personnel and equipment; the prior notification of local fire officials; burn and contingency planning; and the use of appropriate prescribed burn techniques that cause the fire to be confined to a predetermined area.

SECTION 4. CIVIL LIABILITY.--

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

B. A private landowner or a private landowner's agent, contractor or legally authorized designee who is not a certified prescribed burn manager and who conducts a prescribed burn is liable for double damages to property or for personal injury caused by the prescribed burn, including the reignition of a previously contained prescribed burn, if that private landowner or that private landowner's agent,
contractor or legally authorized designee was negligent in
starting, controlling or extinguishing the prescribed burn.

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

A. common terminology and definitions;

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

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

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

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

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

G. requirements for notification of the public and
of appropriate personnel, such as fire dispatch personnel,
fire department personnel and county or municipal fire
marshals, prior to and upon ignition and termination of the
prescribed burn;
H. procedures to permit prescribed burns that
cross jurisdictions; and

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

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

SECTION 7. PRESCRIBED BURN MANAGER CERTIFICATION.--

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

B. The department shall adopt rules to create the
prescribed burn manager certification program, including the
training and certification of certified prescribed burn
managers; training components and engagement of subject
matter experts; application processes; qualification for and
terms and durations of certification; types of certification,
if applicable; oversight of the program; grounds and
processes for renewal, suspension and revocation of
certifications; and application, certification and renewal
fees.

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

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

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

SECTION 9. Section 30-32-4 NMSA 1978 (being Laws 1882,
Chapter 61, Section 7, as amended) is amended to read:

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

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

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

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

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

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

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

(4) to administer the Prescribed Burning Act.

B. Money in the forest land protection revolving fund shall not revert to the general fund.