

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Senate Finance Committee</u>	<b>LAST UPDATED</b> <u>2/20/2025</u> <b>ORIGINAL DATE</b> <u>1/28/2025</u> <b>BILL NUMBER</b> <u>CS/CS/Senate Bill 33/ec/SCONCS/SF CS</u>
<b>SHORT TITLE</b> <u>Wildfire Prepared Act</u>	<b>ANALYST</b> <u>Davidson</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMNRD	No fiscal impact	Up to \$500.0	Up to \$500.0	\$1,000.0	Recurring	Wildfire Prepared Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to an appropriation in the General Appropriation Act

### Sources of Information

LFC Files

#### Agency Analysis Received From

Energy, Minerals and Natural Resources Department (EMNRD)  
 Department of Finance and Administration (DFA)  
 New Mexico Attorney General (NMAG)  
 Department of Homeland Security and Emergency Management (DHSEM)

## SUMMARY

### Synopsis of SFC Substitute for Senate Bill 33

The Senate Finance Committee substitute for Senate Bill 33 (SB33) amends sections of the Forest Conservation Act, creates a section called the Wildfire Prepared Act, adds to and defines members of the Fire Planning Task Force, updates the duties of the Fire Planning Task Force, creates the wildfire prepared fund (WPF), and creates the Wildfire Prepared Program within the Energy, Minerals and Natural Resources Department (EMNRD).

SB33 defines an eligible property owner—individuals who will be eligible for the wildfire prepared program grants from the newly established wildfire prepared fund—as a New Mexico resident who owns a residence in New Mexico. The bill also applies definitions for a residence, defining it as a dwelling structure designed for long-term habitation and its property.

The bill also states that nothing in the new statute creates additional right of action, nor will the new act guarantee any benefits or be construed to create interest in property.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

## FISCAL IMPLICATIONS

SB33 directs EMNRD to hire personnel with WPF funds, with EMNRD estimating the four personnel could cost up to \$500 thousand per year. The bill explicitly states the personnel will be funded with WPF funds, removing flexibility for EMNRD to fund the personnel with a mixture of WPF and recurring funds.

## SIGNIFICANT ISSUES

Wildfires will be an ever-present part of the state's future, and the state's risk of wildfires will only increase as snowpacks decline, average precipitation drops, and average temperatures rise. New Mexico already has a high risk of wildfire—higher than 82 percent of states in the United States. Wildfire risk is based on likelihood, intensity, exposure, and susceptibility.

New Mexico is in the 86th percentile for risk to homes. In New Mexico, 46 percent of homes and buildings are located in direct exposure areas, meaning they are adjacent to flammable vegetation and indirect sources, such as embers and home-to-home ignition. The remaining homes are in areas with minimum exposure (or not likely to be subjected to wildfire) or in indirect exposure (close to indirect sources).

New Mexico's high wildfire risk has adverse impacts on the insurance market, predominantly affecting homeowners in areas of high wildfire risk. Analysis from EMNRD notes homeowners working to recover from the 2022 Hermit's Peak-Calf Canyon fire and the 2024 South Fork and Salt fires are finding it increasingly difficult to obtain insurance.

EMNRD points to efforts in California, another high wildfire risk state, and the programs it has instituted to aid homeowners in supplying defensible space grants (preparing areas near homes and buildings to be more fire resilient by clearing brush, thinning, and building with fire resistant materials). EMNRD analysis notes Senate Bill 33 proposes to institute a similar program with the Wildfire Prepared Program.

SB33 also tasks the Wildfire Prepared Program, in addition to providing technical assistance and training and conducting assessments, with awarding grants with funds from the WPF. Using the fund to both cover the recurring cost of administration and grants with no cap assigned to them could potentially deplete the fund and result in use of the general fund to continue funding Wildfire Prepared Program personnel.

The New Mexico Attorney General (NMAG) notes the bill authorizes the Fire Planning Task Force to develop nationally recognized wildfire standards, without also providing clear definitions of what a nationally recognized standard for wildfires is, which could require guidance from the state's courts.

NMAG analysis further suggests the addition of an insurance industry trade representative to the task force could lead to conflicts of interest because the industry could benefit from the grants.

In addition, NMAG points out the bill is not clear whether community-based programs or the to-be-created state Wildfire Prepared Program will be responsible for assessing and certifying structure. Further, NMAG states at least 50 percent of the grant money will go appropriated to qualified entities, but the bill does not provide what the qualifications will be. As the bill is currently written, NMAG notes, “It appears that any person contracted to assist private property owners harden structures at their primary residence would be considered a “qualified entity.”

Finally, NMAG raises concerns that the Fire Planning Task Force and the Wildfire Prepared Program might conflict with the Anti-Donation Clause of the state constitution:

Unless a constitution exemption applies, Section 14 of Article IX prohibits the state or any of its political subdivisions from “directly or indirectly lend[ing] or pledg[ing] its credit or mak[ing] any donation to or in aid of any person, association or public or private corporation.” Accordingly, absent an exemption, the grants contemplated under Section 4(A)(2) to “qualified entities to assist eligible property owners with making the necessary changes to their primary residences for the sole purpose of making the primary residences wildfire prepared grants” could run afoul of the anti-donation clause.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB33 relates to Senate Bill 81, which creates the Property Insurance Program Association Board to administer a program to provide property insurance of last resort (as part of the existing Fair Access to Insurance Requirements plan). Senate Bill 81 also has provisions contingent on passage of Senate Bill 33.

Related to House Bill 175, which amends portions of the Forest and Watershed Restoration Act to allow the forest land protection revolving fund to be used to create buffers of defensible space around structures and properties in high-risk areas.

House Bill 220 is related to SB33 in that both bills seek to address standards for building codes, defensible space requirements, and ordinances that will reduce the threat of wildfires and fire hazards to property.

## **TECHNICAL ISSUES**

Analysis from the Department of Homeland Security and Emergency Management (DHSEM) notes the Department of Finance Administration informed the agency the grant fund prescriptions described in the bill may not correlate to available grant timelines.

NMAG recommends changes to the bill regarding the state’s Anti-Donation Clause:

[Bill drafters should] consider incorporating an Anti-Donation Clause exemption, specifying that any grant directly or indirectly benefitting any private person or entity requires adequate consideration in exchange for the grant funds, or restricting the use grant funds for improvements on private property.

NMAG also notes the bill currently has conflict of interest issues with the private property insurance industry. NMAG recommends striking the language that would add a representative of the private insurance industry to the Fire Planning Task Force and instead requiring the task force to consult with and solicit comments from the private insurance industry.

AD/hj/hg/sgs/hg/sgs/SL2