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FISCAL IMPACT REPORT

SPONSOR Allison/Lente/Johnson/Lee Alcon/
Garcia, H. **LAST UPDATED** 2/06/2024
ORIGINAL DATE 1/19/2024

SHORT TITLE DOT Cattle Guard Clearing On Tribal
Lands **BILL
NUMBER** House Bill 68

ANALYST Hanika-Ortiz

APPROPRIATION* (dollars in thousands)

| FY24 | FY25 | Recurring or Nonrecurring | Fund Affected |
|-------|-----------|------------------------------|------------------|
| \$0.0 | \$5,000.0 | Nonrecurring | General Fund |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Livestock Board (NMLB)

Indian Affairs Department (IAD)

Department of Transportation (NMDOT)

SUMMARY

Synopsis of House Bill 68

House Bill 68 appropriates \$5 million from the general fund to DOT for the purpose of clearing cattle guards on Native American nation, tribe, and pueblo lands in New Mexico.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

The appropriation of \$5 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 shall revert to the general fund.

NMDOT reports HB68 would increase the budget available for this purpose from the road fund.

NMDOT would need to equitably distribute the appropriation among its six districts based on need and work with sovereign entities on standards for which cattle guard crossings to prioritize.

The bill is not clear if the appropriation can be used for expenses outside of performing the work. For instance, NMDOT notes, for obtaining rights of way with each of the 23 tribal entities in New Mexico and the Bureau of Land Management before entering and clearing the cattle guards.

SIGNIFICANT ISSUES

NMDOT says it is not required to clear cattle guards on private or tribal lands.

Pursuant to Rule 18.31.6 NMAC:

Driveways shall not be permitted through an existing right-of-way fence, the continuation of which is necessary for the safety of the traveling public, unless the applicant first agrees in writing to construct and maintain a gate or a cattle guard and additional fence in good repair and to keep the gate closed to livestock. The department shall determine whether a gate or cattle guard is required.

The bill directs NMDOT to consult with the governing authority of Native American nations, tribes, and pueblos to prioritize which cattle guards on their affected lands need clearing based on the greatest need and use. NMDOT may also need to obtain rights-of-way privileges. IAD reminds the Legislature that any NMDOT consultation must be done according to the State Tribal Consultation Act. In addition, a memorandum of agreement with NMDOT may be needed to perform work on roads maintained by the Bureau of Indian Affairs or contracted out to the nation, tribe, or pueblo.

PERFORMANCE IMPLICATIONS

Section 66-7-363 NMSA 1978 states, as the DOT annual budget permits, DOT shall “...provide cattle underpasses, water pipelines and cattle guards as the DOT may deem necessary....”.

OTHER SUBSTANTIVE ISSUES

NMDOT noted it has seven open tort cases involving cows on the highway. The department also reported it is focused on fencing for livestock maintenance because fences are more efficient.

ALTERNATIVES

NMDOT said the funding could be appropriated to NMDOT for distribution to tribal entities as grants.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Non-working cattle guards may continue to cause cattle and traffic hazards if not maintained.