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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/09
 SPONSOR Asbill LAST UPDATED 02/24/09 HB _____
 SHORT TITLE Seizure & Brand Inspection Of Livestock SB 492
 ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1 See Fiscal Implications			Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Livestock Board (NMLB)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Section 77-9-30 requires that livestock shipped or driven out of district or out of state be inspected by a state brand inspector. The inspector must make a complete record of the inspection that remains in the state file for three years. Livestock may not change hands prior to issuance of the brand inspector's certificate.

SB 492 expands Section 77-9-30 to address the circumstance of livestock seized by the federal government. SB 492 prevents a state brand inspector from issuing a brand inspection certificate for livestock seized by federal land managers, unless: (1) the owner consents; (2) the owner is unknown, or (3) the federal government has obtained a court order "from a court of competent jurisdiction." SB 492 provides exceptions to this requirement in the case of feral animals, wild horses or burros, and stray animals.

In addition, SB 492 limits the scope of Section 77-13-2, “Impoundment of Estray Animals.” Section 77-13-2 allows persons to impound estray animals when found on property the person owns, and allows authorized persons to impound estray animals found on public land. The amendment to Section 77-13-2 proposed by SB 492 adds a new provision (D) stating that persons may not impound livestock found on land where the condition of a federal permit, federal allotment, or federal lease are in dispute.¹

FISCAL IMPLICATIONS

AOC notes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The agency states: “The NMLB has, in the past, had to make determinations in such cases without benefit of clear guidance from the Livestock Code (Section 77). This has caused, in the past, serious controversy and debate as to the proper actions to be taken. The bill would clarify and codify the parameters within which the NMLB is authorized to issue a brand certificate in the case of federally seized animals.”

AOC explains that a “court of competent jurisdiction” is simply “a court that has jurisdiction to hear the claim brought before it.” *Knox v. Agria*, WL 185436, slip op. at 3 (S.D.N.Y., 2009). Both state and federal courts appear to be courts of competent jurisdiction in this case, although the matter does not appear to have been litigated. *See* NMSA 1978, Section 77-18-2 (providing that livestock inspectors must obtain a warrant from a magistrate court prior to seizing cruelly treated livestock. But federal actors are not generally involved in this type of case). Although the federal government may adopt a position regarding the appropriate court to issue a court order, the proposed statute indicates that the federal government is to initiate proceedings to obtain the court order.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMLB concludes that, “The New Mexico Livestock Board would be in a position of acting under vague guidance by the Livestock Code, thereby causing the decision to be vulnerable to litigation.”

BW/mt:svb

¹ Excerpted from AOC response dated 2-24-09.