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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11

SPONSOR Burt LAST UPDATED _____ HB _____

SHORT TITLE State Responsibility for Endangered Species SB 565

ANALYST Hoffmann

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$5,300.0 – \$8,200.0)	(\$5,300.0 – \$8,200.0)	Recurring	Game Protection Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$5,300.0 – \$8,200.0)	(\$5,300.0 – \$8,200.0)		Recurring	Game Protection Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 567

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game and Fish (DGF)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 565 proposes to amend Section 17-2-38 NMSA 1978 to remove reference to the Endangered Species Act and federally listed threatened or endangered species and vest responsibility for management and protection of threatened and endangered species solely in the Department of Game and Fish. Four of 9 references to “federal” have been removed from the document. Three of these removals eliminate requirements to communicate with appropriate federal agencies and the fourth prohibits the director from entering into agreements with federal agencies for the management of threatened or endangered species.

FISCAL IMPLICATIONS

The DGF reports this legislation will significantly impact the Department's ability to carry out the various components of its mission related to threatened and endangered species due to a total loss of any federal funds that are available pursuant to agreements. The bill prohibits the agency from entering into any agreements with federal agencies pursuant to programs under the Wildlife Conservation Act, which will eliminate an estimated \$2.3 – 3.2 million dollars currently available to the state pursuant to State Wildlife Grants, Section 6 Grants, Cooperative Wolf Grants, Central Arizona Project Grants, Bureau of Reclamation Grants on both the San Juan and Pecos Rivers, and portions of Waterfowl Area Management Grants. In addition, several other grants may be partially affected that deal with Landscape Conservation Cooperatives, fish stocking activities, Wildlife Area Management, Whirling Disease investigations and interdiction, Rio Grande Cutthroat Trout programs, and various fish monitoring activities. The level of impact on these may be as high as \$3-5 million. If DGF is to continue the current programs, general fund appropriations will be needed to replace lost federal funds.

SIGNIFICANT ISSUES

The DGF provided the following discussion.

The department currently has numerous agreements in place with federal government partners including a Section 6 Agreement with the Fish and Wildlife Service to cooperate in the protection and management of threatened and endangered (T&E) species in New Mexico. Because this bill prohibits the state from entering into agreements with the federal government pursuant to endangered species management in the State, many if not all of these agreements would probably be voided. If the Section 6 Agreement was invalidated, the permit from the Fish and Wildlife Service to work with T&E species would probably be invalid and the Department would no longer be able to even work with species listed under the ESA. In addition, the Department would no longer be eligible to receive funds for endangered species management and T&E conservation or management work would have to be financed by other means such as the game protection fund, general fund, or private funds.

There are currently 6 species that are listed under the ESA but not also listed by the state. These species (beautiful shiner, blackfooted ferret, jaguar, Mexican spotted owl, chiricahua leopard frog, and razor back sucker) would not receive State protection until they could be added to the list. In the interim, the State and agency employees, may inadvertently commit violations of federal law due to un-intentional harm or take and be subject to prosecution under the ESA.

This bill may severely limit the Department's ability to conduct and participate in many activities, including habitat improvement projects that involve working on Forest Service or BLM land due to the inability to complete National Environmental Protection Act (NEPA) compliance.

The OSE notes the ESA imposes an unfunded federal mandate on states, but not recognizing federally-listed endangered or threatened species under the ESA will remove neither the federal protections under the ESA nor the state obligations under the ESA.

PERFORMANCE IMPLICATIONS

The DGF reports this bill will severely limit the department from accomplishing many of its functions related to T&E and game species.

ADMINISTRATIVE IMPLICATIONS

The OSE reports that though the ESA imposes an unfunded federal mandate on states, not noticing or consulting with federal agencies in state listings could impair the state's ability to effectively and timely protect state-listed species. Not recognizing federally-listed species as state-listed species could impair the state's ability to access federal funding that could be used to protect the state's control of its waters and the rights of New Mexico water users.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 567 is a duplicate of this bill.

TECHNICAL ISSUES

The DGF observed the following technical issues.

The word "federal" in line 24 on page 5 should be deleted.

The words "and federal" in line 24 on page 14 should also be deleted.

The words "and federal" in lines 8 and 9 on page 16 should also be deleted.

OTHER SUBSTANTIVE ISSUES

The bill requires that the DGF go through the entire listing process for species listed pursuant to the ESA, but not currently listed pursuant to the State WCA instead of the previous allowance that enabled the State Game Commission to adopt species from the ESA without a State process. It is unclear if those species currently present on the State WCA list that are federally listed will grandfathered in or if they will have to go through the State process. If they will have to go through the complete State process it will require significant time and financial resources.

The OSE advises that the bill does not eliminate the provisions that the director seek the cooperation of federal agencies in the implementation of a recovery plan and to ultimately submit the plan to the Secretary of Interior for approval.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The DGF states they will be able to continue working to protect and manage T&E species in New Mexico.

According to the OSE, the provisions in the New Mexico Wildlife Conservation Act that allow adoption of federally-listed species as state-listed species and the requirement that notice be given to federal agencies of state-listed species will remain.