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## FISCAL IMPACT REPORT

	02/08/13				
	02/28/13				
	<b>ORIGINAL DATE</b>	03/07/13			
<b>SPONSOR</b>	Papen	<b>LAST UPDATED</b>	03/11/13	<b>HB</b>	
					326/aSCORC/aSJC
<b>SHORT TITLE</b>	Enforcement of Railroad Livestock Fencing			<b>SB</b>	/aSFI#1
				<b>ANALYST</b>	Weber/Chabot

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Transportation (DOT)

### SUMMARY

#### Synopsis of SFI Amendment #1

Senate Floor amendment #1 changes potential compensation to a landowner from three times to two times the amount of the presented proof of costs plus any cost of litigation, including attorney fees.

#### Synopsis of SJC Amendment

Senate Judiciary Committee amendment to Senate Bill 326 changes the time to commence construction or provide proof of intent to comply from 10 days to 30 days.

#### Synopsis of SCORC Amendment

Senate Corporations and Transportation Committee amendment to Senate Bill 326 changes

1. On page 3, line 16, strike "Narrow-gauge" and insert in lieu thereof "State-owned railroads and narrow-gauge".

This exempts state owned railroads from the potential penalty for not responding to the

fencing needs of railroad neighbors.

### Synopsis of Original Bill

Senate Bill 326 adds language to 77-16-16 NMSA 1978, Railroads—Fencing of Lines-Damage

In the event that a fence is in a condition of neglect, disrepair or nonexistence, the adjacent landowner may contact the railroad supervisor or the owner of the right of way by certified mail, return receipt requested, and demand repair or construction to the legal standard provided in Section 77-16-17 NMSA 1978. Within ten days the railroad is required to begin shall construction or provide proof of intent to comply. After ten more days, if the railroad has failed to begin construction or to comply with agreed-upon terms of construction or repair, the adjacent landowner may repair, construct or cause to be repaired or constructed the fence at the expense of the railroad calculated at the cost of commercial rates common to the area. If the railroad fails to comply within thirty days of presentation of proof of cost, the landowner shall be compensated in an amount equal to three times the amount of the presented proof plus any cost of litigation, including attorney fees.

Narrow-gauge and recreational railroads are exempt.

### **FISCAL IMPLICATIONS**

This bill would increase the overall cost of fencing rail track only to the degree that DOT failed to respond to legitimate requests for compliance with 77-16-16 NMSA 1978.

### **SIGNIFICANT ISSUES**

NMDOT reports it owns 132 miles of railroad in Valencia, Bernalillo, Sandoval, and Santa Fe Counties, of which approximately 100 miles are located outside municipalities, and would be subject to NMSA 1978, Section 77-16-16 requirements. Various segments of NMDOT-owned railroad are used by Rail Runner, Amtrak, BNSF and Santa Fe Southern Railways.

NMDOT has executed an agreement with the Rio Metro Regional Transit District (Rio Metro) that designates Rio Metro as the managing agency for Rail Runner management, operations and maintenance, including maintenance of railroad fencing. Rio Metro utilizes federal grant funds and its Transit Gross Receipts Tax revenue for these purposes.

NMDOT estimates a cost of \$20,000 per mile to fence both sides of the railroad to standards in Section 77-16-17, NMSA 1978. The amount of fencing work needed on NMDOT-owned rail line varies from year to year. Fencing on NMDOT-owned railroad is replaced on an as needed basis and within the limitations of funding that is made available each year.

SB 326 would impact NMDOT by significantly penalizing NMDOT if it does not meet the proposed deadlines for installing and repairing fencing along NMDOT-owned railroad. The SB 326 provision that stipulates that the adjacent landowner will recover three times the cost of the fencing project from the railroad if the landowner installs the fence and the railroad does not remit payment promptly could be significant if NMDOT is not able to complete fencing projects on the schedules set by SB 326. For example, the \$20,000 per mile fencing installation cost

would become a \$60,000 per mile cost to NMDOT. The penalties paid by NMDOT would reduce the funding that is made available for fencing and other railroad maintenance and repair projects as well as other NMDOT projects.

Private railroads such as BNSF and Union Pacific would likewise be impacted but, again, only to the degree that they failed to respond to legitimate complaints regarding fencing. BNSF operates 1,300 miles of track in New Mexico so their fencing liability could be considerable depending on the current status of existing fence or the lack of a fence. The statute calls for the entire line to be adequately fenced on both sides of the track.

Section 77-16-17 NMSA 1978 defines a sufficient and suitable fence to be a fence at least four and one-half feet high, constructed of posts and wire, the top wire to be four and one-half feet above the ground and shall have at least four wires upon posts not exceeding twenty feet apart.

A June 5, 2012 BNSF news release reports BNSF plans a \$65 million capital program in New Mexico for the year. This includes 560 miles of track surfacing and undercutting work, the replacement of 22 miles of rail and about 142,000 ties, as well as significant signal upgrades for federally mandated positive train control (PTC). There is no mention of fencing.

### **POSSIBLE QUESTIONS**

How many miles of existing track is actually fenced to the legal standard required by 77-16-16 thru 77-16-17 NMSA 1978.

MW:GAC/blm