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## FISCAL IMPACT REPORT

**ORIGINAL DATE**  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SPONSOR** Cisneros

**SHORT TITLE** Private Hunting Land Sales Gross Receipts **SB** 294

**ANALYST** Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18	FY19	FY20		
\$0.0	(\$1,300.0)	(\$1,300.0)	(\$1,300.0)	(\$1,300.0)	Recurring	General Fund
	(\$390.0)	(\$390.0)	(\$390.0)	(\$390.0)	Recurring	Local Governments

Parenthesis ( ) indicate revenue decreases

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

Parenthesis ( ) indicate expenditure decreases

HB 149 proposes expanding the uses of the Big Game Depredation Fund to include direct payments to landowners for documented damage from protected game species.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

State Land Office (SLO)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 294 adds a new section to the Gross Receipts and Compensating Tax Act, NMSA 1978, Section 7-9-1 to -115 (1966, as amended), creating a gross receipts tax exemption on receipts from the sale of access to private lands for hunting and fishing only.

The effective date of this bill is July 1, 2016.

## FISCAL IMPLICATIONS

This bill would exempt three sources of gross receipts from the gross receipts tax: (1) payments to farmers and ranchers by the Department of Game and Fish under the “Open Gate” program; (2) payments to farmers and ranchers by the Department of Game and Fish from the Big Game Depredation Fund (\$450.0 annual revenue from big game stamps with a \$1.4 million fund balance) for materials and services to build fences, cattle guards and other elements to reduce damage; and (3) access fees charged by farmers and ranchers primarily to commercial guides and outfitters who bundle a big game license with access to private lands primarily for non-resident hunters.

The total budget for wildlife depredation and nuisance abatement program at DGF is about \$1.0 million a year. The total appropriations for all programs at DGF is about \$40 million, paid 2/3<sup>rd</sup> from hunting and fishing licenses and 1/3<sup>rd</sup> from federal matching funds.

The majority of hunting and fishing in the state is conducted, presumably, on BLM, US Forest Service and state lands, but approximately 10% to 15% of hunting is conducted on private lands. This bill would exempt fees and income from state and federal sources for hunting or fishing on private lands. Assume that all fees – Open Gate, Wildlife Depredation, and private access fees total \$10 million (total hunting and fishing activity must have a base of at least 5 x the annual budget of the DGF, or \$200 million with 10% of that activity represented by the fees exempted in this bill). The vast bulk of this revenue is generated in non-municipal areas, hence the state general fund impact is 5.125% (the state gross receipts tax rate) times \$20 million and the county impact is about 1.5% times \$20 million.

Alternatively, a study of the economic impact of hunting, fishing and trapping in New Mexico in the year 2013 was prepared by Southwick Associates and delivered July 31, 2014. This study indicated that 86,384 hunters spent an average of \$3,963 on trip expenses and equipment spending and averaged 8.6 days of activity. These hunters averaged \$400 each in “land leasing and ownership” which, when multiplied by 86,384 hunters implied payments for access to private lands was about \$34 million.

If we use \$25 million for the total access fees and \$1 million for the open gate and big game depredation programs, this exemption is scored as in the table.

During the 2015 – 2016 interim, TRD began identifying ranchers who received income from this source and issuing assessments. Many of these ranchers have reached agreement with TRD on how much back income will become taxable. Other ranchers are withholding these payments, contending that the fees are not income but indemnification for actual damage done to land and fences by protected wildlife and should not be taxed either on a gross basis under the gross receipts tax or on a net basis through the Personal Income Tax. It should be emphasized that the fiscal impacts in the table are scored against the potential tax base, not the amount of gross receipts tax that TRD has actually collected.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

## **SIGNIFICANT ISSUES**

Some elk and deer, particularly, graze on private lands and cause a decrease in feed available to the private landowner's herds. There are three ways that states have to deal with this "depredation." For example, Washington State has three programs:

- The landowner hunting permit (LHP) program is designed to increase hunter access to private lands and to help landowners address long-standing deer/elk damage issues. LHPs can include permits issued to landowners that allow hunting without a landowner access fee; that allow hunting only if a landowner access fee is paid; or a combination of both. Permit levels, types, and seasons are allocated and approved in advance by the Commission based upon input from the LHP contractors/participants. The approved hunting seasons and regulations may, in some cases, be different than those approved for the hunting public during general seasons.
- The Fish and Wildlife Commission also has approved damage prevention permits DPPs provide landowners with a management tool that utilizes hunters to address property damage. Once issued to a landowner by the Commission, a DPP allows the properly licensed landowner to remove damage-causing deer/elk/turkey, or it allows another licensed hunter to be selected by the landowner to take the animal(s). Landowners and/or hunters may keep harvested wildlife, and landowners may charge and keep access fees in lieu of submitting damage claims to WDFW. The timing of a DPP harvest is not dictated by general hunting seasons, but by the occurrence of depredation.
- A kill permit may be issued to a landowner and immediate family that have documented deer and elk damage. An animal killed under this authority may be retained by the landowner if authorized by the Director. No licenses or tags are required. Landowners may be allowed to retain the animal in exchange for agreeing to not submit damage claims. The timing of a kill permit is not dictated by general hunting seasons, but by the occurrence of depredation.

Each of these three strategies is in lieu of direct compensation from the state for game depredation. However, while Washington has a full range of measures, New Mexico – possibly because of the anti-donation clause of the state constitution (Article IX, Section 14) – does not provide for direct payments to farmers and ranchers.

Testimony at RSTPC in December indicated that at some point in the past, DGF may have made direct payments from the Big Game Depredation Fund to farmers and ranchers; however, this assertion does not follow from a review of the statutory history. Section 17-3-13.4 NMSA 1978 was enacted in 2001 and has not subsequently been amended. HB 149 proposes to allow direct payments for depredation damage.

New Mexico has two programs: the Open Gate program and the Unitization program. The open Gate program is described as follows:

“Landowners Can Earn Extra Cash for a Hunting Lease. The New Mexico Department of Game and Fish is interested in leasing more lands with good habitat for hunting, fishing, and trapping. Landowners can sign an agreement with NMDGF and receive a per-acre payment. Under some circumstances, NMDGF will pay for right-of-way across the property of a landowner, so hunters and anglers can access large tracts of State Trust and federal lands. The State of New Mexico provides liability protection to landowners who participate in Open Gate. Funding for the program is provided from a portion of annual Habitat Management & Access Validation sales”

The unitization program is a joint agreement between the state, the federal government and private landowners to open larger tracts of land for hunting.

### **PERFORMANCE IMPLICATIONS**

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the exemption and other information to determine whether the exemption is meeting its purpose.

### **ADMINISTRATIVE IMPLICATIONS**

Minimal to TRD. TRD does neither audit for, nor track exempt revenues.

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

HB 149 proposes expanding the uses of the Big Game Depredation Fund to include direct payments to landowners for documented damage from protected game species.

### **TECHNICAL ISSUES**

This bill does not contain a delayed repeal date. The LFC recommends adding a delayed repeal date. LFC also recommends rephrasing this proposed exemption as a deduction, with separate reporting, so that the cost of the measure could be measured.

### **OTHER SUBSTANTIVE ISSUES**

The AGO notes that New Mexico courts have generally upheld tax exemptions. According to one early case, “[i]n the exercise of the power of taxation the state is free to select its subjects, and also to grant exemptions. There is no rule under any provision of the Constitution of the state or national government that requires a precise equality in taxation.” *Lougee v. New Mexico Bureau of Revenue Comm'r*, 42 N.M. 115, 134, 76 P.2d 6 (1937).

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

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