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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/11 /17

SPONSOR HCPAC LAST UPDATED \_\_\_\_\_ HB 390/HCPACS

SHORT TITLE Equine Rescue & Shelter Right of Refusal SB \_\_\_\_\_

ANALYST Daly

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	NMLB Operating Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with CS/SB 126, SB 284 and HB 446  
Relates to HJM 17 and HM 102

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Department of Game & Fish (DGF)  
NM Livestock Board (NMLB)  
Office of the Attorney General (OAG)

### SUMMARY

#### Synopsis of Bill

The House Consumer and Public Affairs Committee Substitute for House Bill 390 first defines the term “equine” as “a horse, pony, mule, donkey or hinny”, and includes equines in the definition of livestock in the Livestock Code. It then amends the estray provisions of Article 13 of that Code to maintain the current notice and disposition process for estrays that are *not* equine, and creates a new process for equine strays: a registered equine rescue or retirement facility shall be given the right of first refusal to purchase the estrayed equine, and if the rescue facility is unable or unwilling to purchase the equine for an ownership transfer fee to be set by the NMLB which cannot exceed actual costs for the equine’s care during impoundment, that board must auction it through a closed bid process(as established by board rule). If the equine is not sold through that process, the board shall have it humanely euthanized. CS/HB 390 similarly bifurcates the disposition processes upon seizures of livestock running at large and cruelly treated livestock, providing the same disposition process when the livestock is an equine.

This bill also directs NMLB to adopt rules for issuing temporary capacity waivers to equine facilities to allow for transfer of equines in the custody of the board. It substitutes the defined term “equine” for “horse” in other existing statutes, including the Income Tax Act’s horse shelter rescue fund check off provision to contribute tax refunds to that fund, Criminal Code provisions governing cruelty to animals, and numerous other provisions in the Livestock Code.

### **FISCAL IMPLICATIONS**

NMLB noted in its analysis of an earlier version of this bill that it will no longer be able to sell equine to the highest bidder at auction, which may reduce that funding source.

### **SIGNIFICANT ISSUES**

By including equines within the definition of livestock in the Livestock Code, this bill does not address the issue regarding wild (undomesticated) horses found or captured on private land that has arisen in light of the New Mexico Court of Appeals’ decision in *Wild Horse Observers Association, Inc. v. New Mexico Livestock Board* (No. 34,097, filed August 4, 2015), wherein the court held that wild horses were not “livestock” under the Livestock Code, and NMLB had no jurisdiction over them as they were not stray.

### **ADMINISTRATIVE IMPLICATIONS**

NMLB, along with the OAG, pointed out in their previous analyses that there is no direction in the bill in the event more than one rescue or retirement facility wish to purchase an equine. This may be an area to be addressed by NMLB under its rulemaking authority. See Section 77-2-7(M) NMSA 1978.

### **CONFLICT, RELATIONSHIP**

HB 390 conflicts with CS/SB 126 and SB 284, each of which provides for different dispositions of horses impounded under the NMLB’s jurisdiction. It also conflicts with HB 446, which transfers jurisdiction over wild horses from NMLB to DGF. It is related to HJM 17 and HM 102, which requests the Conservation Services Division of DGF conduct an interim study and provide recommendations to protect, maintain and enhance wild horse herds and habitats in New Mexico to the legislature by December 2017.

### **TECHNICAL ISSUE**

Section 8, setting forth disposition procedures for stray equines, does not direct the disbursement of any sale proceeds, as is addressed in Section 10 on page 16, lines 20-24 for equine livestock running at large, and in Section 16 on page 27, lines 4-9 for cruelly treated equines.

### **OTHER SUBSTANTIVE ISSUES**

“Hinny” is defined in Section 3(P) to mean the offspring of a male horse and a female donkey.